



THE
COMPILED LAWS OF UTAH

THE DECLARATION OF INDEPENDENCE

AND

CONSTITUTION OF THE UNITED STATES

AND

STATUTES OF THE UNITED STATES LOCALLY
APPLICABLE AND IMPORTANT.

COMPILED AND PUBLISHED

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Residence of
corporators

§ 2267. s 1. Be it enacted, etc.: Hereafter, whenever any number of persons, not less than five, one-third of whom being residents of this Territory, and desirous of associating themselves together for the establishing and conducting any mining, manufacturing, commercial or other industrial pursuit, or for conducting the business of loan, trust or guarantee associations, and for the construction or operation of wagon roads, irrigating ditches or the colonization and improvement of lands, or for colleges, seminaries, churches, libraries, or any other benevolent, charitable, or scientific associations, or for any rightful subject consistent with the Constitution and laws of the United States and the laws of this Territory, and who wish to incorporate for that purpose, may, by complying with the provisions of this act, become a body corporate.

Purposes

Must enter
into agree-
ment, what it
must contain
March 8, 1880

§ 2268. s 2. They shall enter into an agreement in writing, signed by each of them, and by at least three of their number acknowledged before the probate judge of the county in which they have established or intend to establish their principal place of business, stating the precinct or city, and stating the name of the association, their names and places of residence written in full, the time of its duration, which shall not in any case be less than three years nor more than fifty years, the pursuit or business agreed upon, specifying it in general terms, the place of its general business, the amount of stock each party has subscribed, the amount of each share and the limit of capital stock agreed upon, the number and kind of officers for the association, with their qualifications and term of office and the time and manner of their election, removal and resignation, and whether the private property of the stockholders shall be liable for its obligations or not, with such additional clauses as they deem necessary for the conducting of the business and its future safety and welfare. To this there shall be added the oath or affirmation of three or more of their number to the effect that they have commenced, or it is bona fide their intention to commence, and carry on the business mentioned in the agreement, and that the affiants verily believe that each party to the agreement has paid, or is able to and will pay the amount of his stock subscribed for, provided that said acknowledgment shall not be made before the probate judge until ten per cent. of the stock subscribed by each shareholder has been paid in; *Provided*, That where the amount of the capital stock of any corporation which may

March 13, 1884

Provido.
Capital stock

be formed under the provisions of this act, consists of the aggregate valuation of property, for the working, development, management, use, sale or exchange, of which such corporation shall be formed, no actual subscription in money to the capital stock of such corporation shall be necessary; but each owner of such property shall be deemed to have subscribed such an amount to the capital stock of such corporation as under the by-laws will represent the fair estimated cash value of so much of said property, the title to which he may, by deed of trust, convey, or may have conveyed, or vested in such corporation; such subscription to be deemed to have been paid in upon the execution and delivery to such corporation of such conveyance or deed of trust: *Provided further*, That this section shall not be so construed as to prohibit the stockholders of any corporation from regulating the mode of making subscriptions to its capital stock, and calling in the same by by-laws or express contract: *And provided further*, That where subscriptions to the capital stock of any company are paid in other than money, the fact shall be so stated, and the kind of property, with a description thereof, specified in the articles of agreement.

May be part in property

Provide

Provide, must follow

§ 2269. s 3. The agreement, with the oath or affirmation, shall, within ten days from its due execution, be deposited with the probate clerk of the county in which the general business is to be carried on, and shall be by him recorded in a book to be prepared for that purpose and kept in his office, the expenses of which recording shall be paid by the association.

The agreement must be acknowledged

§ 2270. s 4. Before the first or any other officers shall enter upon the duties of their respective offices, they shall take and subscribe an oath of office, and enter into bonds to the acceptance of the probate judge, that they will discharge the duties of such office to the best of their judgment, and that they will not do nor consent to the doing of any matter or thing relating to the business of the association with intent to defraud any stockholder or creditor or the public. And the oath or affirmation and bonds shall be filed in the office of the clerk of the probate court.

How officers to qualify

March 13, 1884
March 11, 1886

§ 2271. s 5. So soon as the agreement and oath or affirmation and oath of office and bonds are filed, the clerk of the probate court shall issue under the seal of the court, a certificate to the effect that the agreement and oath or

Agreement, etc. where to be filed

March 13, 1884 affirmation and oath of office and bonds have been filed in his
 March 11, 1886 office, which certificate, together with a copy of the articles or agreement and oath or affirmation, certified by the clerk of the probate court, must be filed in the office of the secretary of the Territory who shall issue under the great seal of the Territory a certificate that a copy of the articles or agreement and oath or affirmation, containing the required statement of facts, have been filed in his office, which shall be sufficient to constitute the association a body corporate with succession as specified in the agreement, which certificate, or a certified copy of the same, shall be evidence of the due incorporation of the association: *Provided*, That corporations formed for religious, social, benevolent, educational or scientific purposes, or corporations formed for the construction and operation of irrigating ditches, or corporations known in this Territory as "co-operative mercantile institutions," shall not be required to file copies of their articles in the office of the secretary of the Territory, but the clerk of the probate court shall issue to such corporations, under the seal of the court, a certificate to the effect that the articles of agreement and oath or affirmation have been filed in his office, which certificate shall be evidence of the due incorporation of the same.

Copy must be
 filed in secretary's office

Secretary
 must issue a
 certificate

Provided,
 County clerk
 must issue certificate to religious, etc.,
 corporations

March 13, 1884
 March 11, 1886

Powers of the
 corporation

§ 2272, s 6. The corporation in its name shall have power to make contracts, to sue and to be sued, to have a seal, which it may alter at pleasure, to buy, use, and sell or dispose of personal property, to buy, use, sell or dispose of all such real estate as may be necessary for its general business and such as shall be necessary for the collection of its debts or judgments or decrees in its favor; but it shall not have power to enter into, as a business, the buying and selling of real estate. It may make all such by-laws, rules and regulations, not inconsistent with the laws in force, or which may be in force in this Territory, and not inconsistent with other corporate rights, and vested privileges, as may be necessary to carry into effect the object of the association; and such by-laws, rules and regulations may be made in a general meeting of the stockholders or by a board of officers elected by them. It may as hereinafter provided, increase or diminish its capital stock or dissolve the corporation. The corporate powers of the corporation shall be exercised by the board of directors or trustees, who shall be stockholders in the company, and one-third of them residents of the Territory. A majority of

the whole number of directors or trustees shall form a board for the transaction of business, and every decision of a majority of said board shall be valid as a corporate act, and all corporate acts heretofore exercised by the board of directors or trustees of any corporation organized under and by virtue of the laws of Utah Territory, are hereby validated and confirmed.

Directors to
exercise cor-
porate powers

Former corpor-
ate acts vali-
dated

§ 2273. s 7. The capital stock of any corporation now existing, or that hereafter may be organized by or under the laws of this Territory, may be increased by the sale of more shares, or by increasing the par value of the shares, or otherwise, to any amount not exceeding twenty millions of dollars; or such capital stock may be diminished by decreasing the par value of shares, the purchase and cancellation of shares, or otherwise, to any amount not less than twenty-five per cent. in excess of the indebtedness of the corporation. The name of such corporation may be altered, the number of its directors, trustees, or officers be changed by making the number greater or less (but in no case shall the number of said trustees or directors be less than three nor more than thirteen) the articles of agreement or incorporation may be otherwise changed or amended; *Provided*, Such amendment does not alter the original purpose of the incorporation. But no such change shall be made except by a vote representing at least two-thirds of the capital stock, at a stockholders' meeting called for that purpose, in the following manner: Notice shall be given by the president or secretary of the board of directors or trustees of such corporation, in some newspaper printed in the English language, and having a general circulation in the county where the corporation has its principal place of business in this Territory, for at least twenty-one days, stating the nature of the proposed change or amendment, and the time and place of such meeting; such change or amendment, when adopted, shall be signed by the president and secretary of such corporation and be filed and recorded by the same officer as were the original articles of incorporation, and a copy thereof duly certified shall be evidence, as provided in section 17 of this act. Where two or more corporations organized under this act shall desire to unite and consolidate, it shall be lawful for them so to unite and consolidate; *Provided*, That at a regular meeting of said corporations, two-thirds of the stockholders thereof shall by

Capital stock
may be in-
creased or
decreased

Notice

Corporations
may consoli-
date

Notice

vote determine to so unite and consolidate: *Provided further*, That notice of the meetings of such several corporations for such purpose shall be called, by notice published in some newspaper published at Salt Lake city for at least thirty days before such meeting shall be held.

Corporations
may be
dissolved

§ 2274. s 8. Any corporation formed under this act, may dissolve and disincorporate itself by its officers presenting to the probate judge of the county in which the principal office of the company is located, a statement setting forth that at a meeting of the stockholders called for that purpose, it was decided by a two-thirds vote of all the stockholders to disincorporate and dissolve the incorporation. Notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in some newspaper having general circulation in the Territory, once a week for a month. At the time or place appointed, or at any other time or place to which it may be postponed by the judge, said judge shall proceed to consider the application, and if satisfied that the corporation has taken the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

Corporation
has dissolved its
affairs may be
adjusted

§ 2275. s 9. Whenever the corporation shall be dissolved, if there shall be debts or claims due to it, or debts or obligations against it, or assets, real or personal, not converted into money for distribution, the corporate powers shall be continued for the purpose of collecting the debts or claims due and paying its debts or obligations, and selling and converting its assets into money and distributing the same among the stockholders; and if no sufficient means of affecting the object and intent of this section be provided in the agreement or by-laws, the court shall have power on the application of any person interested, to make all needful rules and orders and judgments necessary to carry the provisions of this section into effect.

Corporation
has lien

§ 2276. s 10. The corporation shall collect of the stockholders the amount of stock by them subscribed, in such instalments and at such times as shall be settled by the agreement or by-laws. It shall have a lien on the amount paid in and the dividends thereon for any balance due for the stock of a delinquent stockholder.

§ 2277. s 14. The officers, after being fully qualified officers to act until their successors are qualified, may continue to act, unless removed for misconduct, until their successors are qualified.

§ 2278. s 12. If, from any cause, the officers shall not May be elected also other than the regular board be elected at the time provided in the agreement or by-laws, such election may be made at such other time as the officers and directors may appoint. If such appointment be not made within three months, then at the call of any six stockholders.

§ 2279. s 13. It shall be the duty of the corporation Corporation to keep correct books to keep true and correct books of its proceedings and business.

§ 2280. s 14. The stock shall be deemed personal prop- stock, that shall pass only, transferable erty, and may be transferred in such manner as may be provided in the agreement or by-laws.

§ 2281. s 15. If the secretary, clerk, or other person if convicted of such crime having the charge of keeping the books of the corporation, or any other person whose duty it is to make entries in such books, shall wilfully omit to make the proper entries, or shall knowingly and wilfully make any false and fictitious entries therein, with intent to deceive or defraud the corporation or any stockholder, creditor or other person, he and his counsel- lers, advisers, aiders and abettors shall be deemed guilty of forgery, and shall be punished as provided by law for the punishment of the crime of forgery.

§ 2282. s 16. If any officer, director, employee, or other same person having the charge or management of any money or other property of the corporation, or to whom any such money or other property shall be entrusted for any purpose whatever, shall fraudulently misapply, carry away, secrete, conceal or convert to his own use any such money or other property with intent to defraud such corporation, or any stockholder, creditors or other person, he, his counsellors, aiders and abettors shall be deemed guilty of embezzlement, and shall be punished as provided by law for the punishment of embezzlement.

§ 2283. s 17. It shall be the duty of the clerk, with Certificate of clerk whom the records in this act mentioned are kept, at the request of any person interested therein, or who needs the same for evidence, on being paid his fees therefor, to give a transcript of such record under the seal of said court, and the duty of the secretary of the Territory in like manner to give a transcript under the great seal of the Territory, of the

papers filed in his office, which transcript shall be conclusive evidence of such record and *prima facie* evidence of the facts therein stated.

When corporation
forfeit.

March 10, 1886

§ 2284. s 18. Non-use for two years of the franchise herein given, shall be a forfeiture of the privileges herein granted.

Meeting, votes,
etc.

March 13, 1881

§ 2285. s 19. Whenever a meeting of the stockholders, other than stated meetings shall be necessary, notice shall be given in such manner as may be prescribed in the agreement or by-laws. At all meetings each shareholder shall be entitled to one vote for each share of stock which he or she may have in his or her own right, or any, held by him or her in trust for others, as administrator, executor or guardian, and such votes may be given in person or by an authorized agent or proxy.

Liability of
stockholders

§ 2286. s 20. If the agreement mentioned in section 2 of this act, provide that the individual property of the stockholders shall be liable for the corporate obligations, then such property shall be deemed and taken to be so liable, if it provide that such individual property shall not be liable, then it shall be deemed and taken to be not liable: *Provided*, That the joint property of the association and the unpaid stock shall be liable for the debts of the association.

Right to
modify or
repeal
reserved

§ 2287. s 21. The Governor and Legislative Assembly may hereafter modify or repeal this act; but if it be repealed, or if the franchise of any corporation organized under this act, shall be forfeited, the corporation may continue for the purposes specified in section 9 of the act to which this is an amendment.

How religious
associations
may incorporate.

§ 2288. s 22. Religious, social, benevolent, scientific and other corporations included in section 1 of this act when pecuniary profit is not their object, may, in accordance with the rules, regulations or discipline of such association or institution, elect directors, the number thereof to be not less than three nor more than thirteen, and may incorporate themselves as provided in this act.

What steps
necessary to
incorporate
religious, etc.
corporations

§ 2289. s 23. Instead of the requirements provided for incorporating associations in section 2 of this act, pertaining to subscription of capital stock, or the payment thereof, it shall be sufficient for associations mentioned in the preceding section, if the articles of agreement or incorporation set forth the holding of the election for directors, the time and place

where the same was held, that a majority of the members of such religious, social, scientific, or benevolent association, or branch thereof, were present at such election and signed the articles of agreement and the result thereof; to be verified by the officers conducting such election. Said directors or other officers shall qualify and continue in office as provided in the articles of agreement or by-laws consistent with this act.

§ 2290. s 24. Corporations referred to in the two preceding sections may hold all the property of the association, or members thereof, owned prior to incorporation or acquired thereafter in any manner, and transact all business relative thereto; but no such corporation must own or hold more real estate than may be necessary for the business and objects of the association; *Provided*, That incorporated associations of Masons, Odd Fellows, endowed institutions of learning, or other associations, under the provisions of this act, may hold such real estate as may be necessary to carry out their charitable purposes, or for the establishment and endowment of institutions of learning connected therewith. The directors must annually make a full report of all property, real and personal, held in trust for their corporation by them, and of the conditions thereof to the members of the association for which they are acting.

§ 2291. s 25. Corporations organized by members of associations mentioned in section 22 of this act, may, when necessary for their good, mortgage or sell their real or personal property; *Provided*, That such mortgage or sale must be authorized by a two-thirds' majority vote of its members present at a duly called meeting for that purpose. Such sale may be made by the directors of such corporation and the proceeds thereof used as may be provided by the by-laws thereof.

§ 2292. s 26. All associations incorporated, or purported to be incorporated under the laws of this Territory, which have heretofore filed, acknowledged, verified and recorded their articles of agreement, or incorporation, in any county of the Territory, shall be established and confirmed as corporations from the time of the organization thereof, as fully as if said articles were acknowledged, verified, filed and recorded in the county of the principal place of business of said incorporation, upon the filing by such incorporation of

certified copies of its articles and certificate of incorporation with the secretary of the Territory, and with the clerk of the county court of the county of this Territory in which its principal office or place of business is situated.

Foreign corporations must file articles in secretary's office, and office of probate judge

§ 2293. s 27. All incorporations not organized under the laws of Utah now doing business in this Territory, shall within sixty days after the passage of this act, and all other foreign corporations within sixty days after commencing business in this Territory, file with the secretary of the Territory and with the probate judge of the county wherein their principal office in this Territory is situated, certified copies of their articles and certificate of incorporation and by-laws, and in case of alteration and amendment of said articles or by-laws thereafter, shall file certified copies of such alteration or amendment with each of said officers, within thirty days after their adoption. Such corporation shall also within sixty days after commencing business in this Territory, designate some person residing in the county in which its principal place of business in this Territory is situated, upon whom process

Must designate person on whom process may be served

issued by authority or under any law of the Territory, may be served, and shall file such designation with the probate judge of said county, and with the secretary of the Territory; and a copy of such designation duly certified by either of said officers, shall be evidence of such appointment, and it shall be lawful to serve on such person so designated any process issued as aforesaid, and such service shall be deemed to be valid service thereof. Any such corporation failing to comply with the provisions of this section, shall not be entitled to the benefits of the laws of this Territory, limiting the time for the commencement of civil actions.

Penalty

(ACT) CHAPTER II.

TELEGRAPH COMPANIES.

SECTION.	SECTION.
2294-2295 How organized; what certificate of corporation to specify.	2306 Check may be so drawn; effect; when genuineness disputed, proof of original to be made.
2296 To be filed with secretary of Territory by certificate.	2307 Instruments so sent, effect as evidence.
2297 Powers of company.	2308 Process for arrest so sent; authority; original to be preserved.
2298 Lines, where they may be constructed.	2309 Writ or order in civil cases; original or copy evidence.
2299 Right of way, how acquired.	2310 When document bears a seal.
2300 May lease and sell franchise or property.	2311 Company may have a distinguishing mark.
2301 Limitation of act.	2312 Order of sending messages; exception as to public business.
2302 Operators exempt from military and jury duty.	2313 Telegraphic copy, etc., defined.
2303 Contracts by telegraph deemed written.	2314 California State Telegraph Co.
2304 Notice by telegraph.	
2305 Contents of instruments may be sent; effect.	

§ 2294. s 1. Any number of persons, not less than three, How telegraph companies may be organized two-thirds of whom must be residents of this Territory, may associate and form a company for the purpose of constructing, owning, holding and working a line or lines of telegraph in this Territory, upon the terms and conditions and subject to the liabilities prescribed in this act.

§ 2295. s 2. Such persons under their hands shall make What certificate of organization must specify a certificate which shall specify:

1. The corporate name of the company.
2. The general route of the principal line or lines of telegraph, designating the principal points to be connected thereby.
3. The amount of the capital stock of the company, and the number of shares into which the same shall be divided.
4. The names and places of residence of the principal shareholders, and the number of shares subscribed for by each.

5. The period of existence of said company, not to exceed fifty years. Which certificate shall be proved or acknowledged and filed in the office of the county clerk of the county in which one of the principal offices of said

company shall be established, and a copy certified by the county clerk filed in the office of the secretary of the Territory, who shall issue to such corporation under the great seal of the Territory a certificate of incorporation.

Where to be
filed

§ 2296. s 3. Upon the issue of the certificate of incorporation, such body shall become a body corporate by the name designated in said certificate, and shall be entitled to all the rights and privileges and subject to the liabilities common to corporations; and a copy of said certificate certified to by the county clerk, or the certificate of incorporation or a certified copy thereof, under the hand of the secretary of the Territory, with the seal of the State attached, may be used as evidence in all courts and places.

Secretary of
Territory must
issue
certificate

Powers of
company

§ 2297. s 4. Such company shall have power to purchase, take, receive, hold, use and vend to others to be used, any patent or patents for telegraphing, and any and all rights thereunder; to purchase, take, receive, hold and maintain any and all rights, privileges and franchises relating to the business of telegraphing; to make, receive by assignment, or ratify by contract or agreement for the building, maintaining, controlling, or working of any line or lines of telegraph; to construct, purchase, lease, take, receive, hold, control and work any lines for telegraphing within the Territory of Utah; and to purchase, take, lease, hold, own, use and occupy any personal or real estate, rights, property, telegraph lines, grants, franchises and privileges, that may be proper or convenient for the complete transaction of its business, or for effectually and conveniently carrying out the objects and purposes of said company. It shall also have power to appoint such directors, officers and agents, and to make such rules, regulations and by-laws as may be necessary or proper in the transaction of its business, and not inconsistent with the laws of this Territory or of the United States.

Where
authorized to
construct
lines of
telegraph

§ 2298. s 5. Such company is authorized to construct lines of telegraph along and upon any road or highway, or across any of the waters or over any lands within the limits of this Territory, by the erection of the necessary fixtures, including posts, piers or abutments, and the appropriation of any standing trees, except fruit and ornamental trees and trees within enclosures, for sustaining the wires of said lines; *Provided*, The same shall not be so constructed as to incom-

mode the public use of said road or highway or injuriously interrupt the navigation of said waters.

§ 2299. s 6. If any person over whose lands said lines shall pass, upon which posts, piers or abutments shall be placed, or standing trees appropriated, shall consider himself aggrieved or damaged thereby, it shall be the duty of the probate court of the county within which such lands are, on the application of such person and on notice of such application being served on the president or any director of such company to appoint three discreet and disinterested persons as commissioners, who shall severally take an oath before any person authorized to administer oaths, faithfully and impartially to perform the duties required of them by this act, and it shall be the duty of said commissioners or a majority of them to make a just and equitable appraisal of all the loss or damage sustained by said applicant by reason of said lines, posts, piers, or abutments, or appropriation of standing trees, duplicates of which said appraisement shall be reduced to writing and signed by said commissioners or a majority of them; one copy shall be delivered to the applicant and the other to the president or any director or officer of said company or corporation, on demand; and in case any damage shall be adjudged to said applicant, the company or corporation shall pay the amount thereof, with the costs of said appraisal, said costs to be set forth and liquidated with the damages appraised; and said commissioners shall receive for their services such compensation as the probate judge may award, to be paid in like manner as the costs and damages appraised. But in no case shall the person feeling himself aggrieved or injured be entitled to any damage, when application is not made to the probate court within six months after the erection of said telegraph lines across the lands of such persons.

§ 2300. s 7. Any telegraph company may at any time, with the consent of the persons holding two-thirds of the issued stock of said company, sell, lease, assign, transfer and convey any rights, privileges, franchises and property of said company.

§ 2301. s 8. This act shall not be construed to limit or impair any rights of the California State Telegraph Company.

§ 2302. s 9. All operators, clerks and persons in the employ of any telegraph company, whilst employed in the offices of said company, or along the route of its telegraph

Commissioners to assess damages; oath of, compensation

May lease or sell and convey their franchise and property

Limitation on former sections

Operators, etc exempt from military and jury duty

lines, shall be exempt from military duty and from serving on juries.

Contracts made by telegraph shall be deemed contracts in writing.

§ 2303. § 10. Contracts made by telegraph shall be deemed to be contracts in writing; and all communications sent by telegraph and signed by the person or persons sending the same, or by his or their authority, shall be held and deemed to be communications in writing.

Notice may be given by telegraph.

§ 2304. § 11. Whenever any notice, information or intelligence, written or otherwise, is required to be given, the same may be given by telegraph; *Provided*, That the dispatch containing the same be delivered to the person entitled thereto; or to his agent or attorney. Notice by telegraph shall be deemed actual notice.

Contents of instruments in writing may be sent by telegraph, force and effect of.

§ 2305. § 12. Any power of attorney or other instrument in writing duly proved, or acknowledged and certified so as to be entitled to record, may, together with the certificate of its proof or acknowledgment, be sent by telegraph; and the telegraphic copy or duplicate thereof shall, *prima facie*, have the same force and effect, in all respects, and may be admitted to record and recorded in the same manner and with like effect as the original.

Checks, etc., may be made or drawn by telegraph, force and effect of.

§ 2306. § 13. Checks, due bills, promissory notes, bills of exchange, and all orders or agreements for the payment or delivery of money or other thing of value, may be made or drawn by telegraph; and when so made or drawn shall have the same force and effect to charge the maker, drawer, indorser, or acceptor thereof, and shall create the same rights and equities in favor of the payee, drawer, endorsee, acceptor, holder or bearer thereof, and shall be entitled to the same days of grace as if duly made or drawn and delivered in writing; but it shall not be lawful for any person other than the maker or drawer thereof, to cause any such instrument to be sent by telegraph so as to charge any person thereby, except as hereinafter in the next section otherwise provided.

When genuineness of party claiming must prove original.

Whenever the genuineness or execution of any such instrument received by telegraph shall be denied on oath by or on behalf of the person sought to be charged thereby, it shall be incumbent upon the party claiming under, or alleging the same, to prove the existence and execution of the original writing from which the telegraphic copy or duplicate was transmitted. The original message shall in all cases be preserved in the telegraph office from which the same is sent.

Original message to be preserved.

§ 2307. s 14. Except as hereinafter otherwise provided, any instrument in writing, duly certified under his hand and official seal by a notary public, commissioner of deeds, or a clerk of a court of record, to be genuine within the personal knowledge of such officer, may, together with such certificate, be sent by telegraph; and the telegraphic copy thereof shall, *prima facie* only, have the same force, effect and validity, in all respects whatsoever, as the original; and the burden of proof shall rest with the party denying the genuineness or due execution of the original.

§ 2308. s 15. Whenever any person or persons shall have been indicted or accused on oath of any public offense, or thereof convicted, and a warrant of arrest shall have been issued, the magistrate issuing such warrant, or any judge of the supreme court, or of any district, county, or probate court may endorse thereon an order signed by him and authorizing the service thereof by telegraph, and thereupon such warrant and order may be sent by telegraph to any marshal, sheriff, constable or policeman; and on the receipt of the telegraphic copy thereof by any such officer, he shall have the same authority and be under the same obligation to arrest, take into custody and detain the said person or persons, as if the said original warrant of arrest with the proper direction for the service duly endorsed thereon had been placed in his hands; and the said telegraphic copy shall be entitled to full faith and credit and have the same force and effect in all courts and places as the original. But prior to indictment or conviction, no such order shall be made by any officer unless in his judgment there is probable cause to believe the said accused person or persons guilty of the offence charged: *Provided*, The making of such order by any officer, aforesaid, shall be *prima facie* evidence of the regularity thereof, and of all proceedings prior thereto. The original warrant and order, or a copy thereof certified by the officer making the order, shall be preserved in the telegraph office from which the same is sent; and in telegraphing the same the original or the said certified copy may be used.

§ 2309. s 16. Any writ or order in any civil suit or proceeding and all other papers requiring service, may be transmitted by telegraph for service in any place, and the telegraphic copy of such writ or order or paper so transmitted may be served or executed by the officer or person to whom it is sent

for that purpose and returned by him if any return be requisite, in the same manner and with the same force and effect in all respects as the original thereof might be if delivered to him; and the officer or person serving or executing the same shall have the same authority and be subject to the same liabilities as if the said copy were the original. The original, when a writ or order shall also be filed in the court from which it was issued, and a certified copy thereof shall be preserved in the telegraph office from which it was sent. In sending it, either the original or the certified copy may be used by the operator for that purpose.

Original or
certified copy
may be used
by operator.

When docu-
ment bears a
seal.

§ 2310. s 17. Whenever any document to be sent by telegraph bears a seal, either private or official, it shall not be necessary for the operator, in sending the same, to telegraph a description of the seal, or any words or device thereon, but the same may be expressed in the telegraph copy by the letters "L. S." or by the word "Seal."

Company may
have a distin-
guishing mark
in their
business.

§ 2311. s 18. The president or secretary of any telegraph company doing business in this Territory, may file in the office of the county clerk of the county in which the principal office of said company within this Territory is situated, and the office of the secretary of this Territory, a copy of any printed blank or envelope, picture or device, used or intended so to be, by said company, with his certificate that the same is commonly used, or is intended so to be, in the business of said company as a distinguishing mark, notice or index of said business, and thereupon said blank, envelope, picture or device shall become the property of said company; and it shall not be lawful for any person, unless by the employment or permission of said company, to print, publish, distribute or use, or cause to be printed, published, distributed or used, either of them, or any copy, counterfeit, similitude or imitation thereof. Any person wilfully offending against the provisions of this section may be punished by fine not to exceed five hundred dollars, or imprisonment not to exceed six months.

Messages must
be sent in the
order in which
they are re-
ceived.

§ 2312. s 19. It shall be the duty of any telegraph company doing business in this Territory, to transmit all dispatches in the order in which they are received, under the penalty of one hundred dollars, to be recovered with costs of suit by the person or persons whose dispatch is postponed out of its order; *Provided*, That communications to and from

public officers on official business may have precedence over all other communications; *And provided also,* That intelligence of general and public interest may be transmitted for publication out of its order.

Precise, as to public business.

§ 2313. s 20. The term "telegraphic copy" or "telegraphic duplicate," wherever used in this act, shall be construed to mean any copy of a message made or prepared for delivery at the office to which said message may have been sent by telegraph.

"Telegraphic copy" and "telegraphic duplicate" defined.

§ 2314. s 21. The California State Telegraph Company, a company formed within the State of California, and having its principal office in the city of San Francisco and doing business within the Territory of Utah, is hereby declared to be duly incorporated under its present corporate name, style and organization; and the right is hereby granted to said company to acquire, own and enjoy, and to dispose of any and all property, real and personal, franchises and privileges as may be proper or convenient for the transaction of its business and for effectually carrying out the objects and purposes of said company, as fully and completely as if said company had been originally formed and duly incorporated under the laws of this Territory, hereby conferring upon said company as ample power to do and transact business and maintain its rights in all courts and places as is or may be possessed by domestic corporations or natural persons.

Confirming certain rights upon California State Telegraph Co.

(ACT) CHAPTER III.

RAILROAD CORPORATIONS.

SECTION.	SECTION.
2315-2316 How company formed; necessary subscription of stock.	2345 When property to vest in corporation; deemed taken for public use.
2317 What the articles must contain.	2346-2347 Compensation, when and where company to pay; court to direct.
2318 Subscriptions to stock, how made.	2348 Person includes municipal corporation.
2319 Articles to be filed with auditor and a copy with the secretary of the Territory; his certificate; corporate powers; evidence of incorporation.	2349 Corporation to maintain fences; what to be paid for killing stock.
2320 Directors to organize; certain officers to be elected; terms of office.	2350 Bell ringing at street or road crossings; when and how whistle to be sounded.
2321 Books of subscription to be opened.	2351 Cars to be run at regular times to be fixed by notice; accommodations for persons and property.
2322 Meeting to choose directors.	2352 Baggage, etc., cars not to be placed in rear of passenger cars.
2323 Meetings of stockholders; what may be done; articles may be amended so as to alter route, etc.	2353 Company not liable to person injured violating its regulations.
2324 Certain officers may be removed by stock holders.	2354 Passengers refusing to pay may be put off.
2325 Proceedings in case directors not elected on day designated by by-laws.	2355 Conductors, etc., to wear badges, otherwise no authority.
2326 Power of the board of directors.	2356 Check to be affixed to baggage; duplicate given to owner.
2327 Directors to cause record to be kept.	2357 Map of land to be filed with auditor and county recorder of each county in which the road runs.
2328 Secretary to keep record of meetings of company and directors; a transfer book, what to be entered.	2358 Incorporation void for non-user, when.
2329 Stock to be personal estate and transferable; not when delinquent for assessments.	2359 Fire, liable to damages from, when.
2330 Directors may require payment of stock; notice; payment, how enforced.	2360-2361 Companies may consolidate; on what terms; how certified; may be ratified by foreign laws.
2331 President and secretary to sign stock.	2362 How to be known after consolidation.
2332 Certificate to be made when stock all paid; where to be filed.	2363 How property vested after consolidation.
2333 Powers and liabilities of corporation.	2364 Must establish offices in Territory.
2334 May use steam or animal power, and regulate the compensation within legal limits.	2365 Suits may be maintained against, for what.
2335 How it may acquire real estate.	2366 Road and other property subject to taxation.
2336 Petition, what to contain.	2367 May lease other roads.
2337-2344 Who defendant; proceedings.	2368 May issue bonds and mortgage property.

SECTION.

2369-2370 Trust deeds and mortgages what a lien on; may cover subsequently acquired property.
 2371 To be recorded in each county in which the road may be; how notice given.

SECTION.

2372 Prior trust deeds and mortgages validated; record to be notice.
 2373 Corporations may be formed to purchase roads; prior corporations validated.

§ 2315. s 1. Any number of persons, not less than ten, How company may be formed. two-thirds of whom shall be residents of the Territory, being subscribers to the stock of any contemplated railroad company, may be formed into a corporation for the purpose of constructing, owning and maintaining such railroad, by complying with the following requirements:

§ 2316. s 2. That, whenever stock to the amount of at Amount of capital stock necessary to be subscribed. least one thousand dollars for each and every mile of the proposed railroad shall have been subscribed, and ten per cent. in cash paid thereon, to a treasurer appointed by said subscribers from among their number, then the said subscribers, either in person or by proxy after having received at least five day's notice from said treasurer of a meeting for that purpose may meet and adopt articles of association, and may elect from among their number not less than five, nor more than thirteen directors.

§ 2317. s 3. The said articles of association shall set What the articles of association must contain. forth the name of the incorporation, the number of years the same is to continue in existence, not exceeding fifty; the amount of capital stock of the company, which shall be divided into shares of not more than one hundred dollars each; the actual contemplated cost of constructing the road together with the cost of right of way, mode of power, and every other appurtenance and thing for the completion and running of said road, as nearly as can be estimated by competent engineers; the names and number of the directors to manage the affairs of the company, who shall hold their office until others are elected, as shall be provided by the by-laws of the company; the place from and to which the proposed road is to be constructed, and the counties into and through which it is intended to pass, and its length as near as may be.

§ 2318. s 4. Each stockholder shall personally subscribe Subscribers to stock to subscribe name, residence, number of shares. to such articles of association his name, place of residence, and the number of shares of stock taken by him in such company; *Provided*, That in case a person having duly paid the ten per cent. required upon his subscription, may sign the same by Proviso.

written proxy, or power of attorney to that effect; and there shall be endorsed or attached to the said articles so subscribed, an affidavit made by any of the directors named therein, setting forth in substance, the said amount of stock has been subscribed, and that ten per cent. in cash thereon has been paid in as aforesaid; and that the subscribers to said articles are personally known to them.

Where articles
to be filed

Secretary of
Territory must
issue a certifi-
cate

Corporate
powers of as-
sociation.

Certified copy
of articles and
certificate to
be evidence of
incorporation.

Directors to
meet and or-
ganize.

Certain officers
to be elected.

Term of office.

§ 2319, s 5. Articles of association formed in pursuance of the provisions of the foregoing section shall be filed in the office of the auditor of public accounts of this Territory, and a certified copy from the auditor shall be filed with the secretary of the Territory, who shall issue to such corporation, under the great seal of the Territory, a certificate of incorporation; and thereupon the persons who have subscribed the same and all persons who may from time to time become stockholders in such company shall be a body politic and corporate, by the name stated in such articles of association; and shall be capable in law to make contracts, acquire real and personal property: to purchase, hold and convey any real and personal property whatever, necessary for the construction, completion and maintenance of such railroad; and for erection of all necessary buildings and yards, or places and appurtenances for the use of the same; and be capable of suing and being sued, and may have a common or corporate seal and make and alter the same at pleasure, and generally to possess all the powers and privileges for the purpose of carrying on the business of the corporation, that private individuals and natural persons now enjoy. A copy of any articles of association filed in pursuance of this act and certified to be a copy by the auditor of public accounts, the certificate of incorporation or a certified copy thereof under the hand of the secretary of the Territory, with the seal of State attached shall, in all courts and places, be evidence of the incorporation of such company, and of the facts stated therein.

§ 2320, s 6. The directors named in said articles of association, shall meet and organize as a board within twenty days after having received notice of their election, given by the treasurer named and designated in the second section of this act; and at the first meeting of the board, after each election of directors, they shall elect from among their number, a president and a vice-president, and from the stockholders a secretary and treasurer, who may hold office during

the pleasure of the board, or until their successors have been elected and qualified; the secretary and treasurer, before entering upon their duties, shall each give a bond with such security as may be prescribed by the board of directors, which shall be filed with the auditor of public accounts; the temporary treasurer required by the second section of this act, shall pay over all moneys received by him as such treasurer to the treasurer elected by the board of directors, as soon as the latter has been qualified.

§ 2321. s 7. The board of directors, when deemed necessary, shall open books of subscription to the capital stock of the company and authorize such persons to superintend the taking of said subscription at such times and places and upon such terms as they may direct, due notice of which shall be given; but no subscription of stock shall be binding on the company or parties so subscribing until the same shall have been accepted and approved by a resolution of the board; in case a greater amount of acceptable stock shall be subscribed than the whole capital required by such company, the board of directors shall distribute the same as equally as possible among the subscribers; but no shares thereof shall be divided in making said distribution.

§ 2322. s 8. There shall be after the first election of directors as prescribed in the foregoing, annual meetings of the stockholders, held in one of the counties in which, or through which, such road is proposed to be or may have been constructed, for the election of directors to serve for the ensuing year, notice of which, appointing a time and place, shall be given as prescribed by the by-laws of the company, or by resolution of the board of directors, which notice shall be published not less than twenty days previous thereto, in some newspaper having a general circulation in the Territory; directors shall be elected from time to time as the by-laws shall designate, or as may be determined in the formation of articles of association, and shall be chosen by ballot and by a majority vote of the stockholders, being present in person or by written proxy, and every such stockholder shall be entitled to one vote for every share of stock which he may have owned for ten days next preceding election; the directors may hold office for one year and until their successors are elected and qualified.

Books of subscription to be opened.

Notice

Meeting to choose directors, when held; notice to be given.

Number of; how chosen; term of office.

Special meetings of stockholders: notice of, how given, what to contain.

What business to be transacted.

Proceedings when majority do not attend.

Articles of association may be amended so as to alter route, etc.

§ 2323. s 9. Meetings of the stockholders may be called at any time during the interval between the annual meetings, by the directors or by any number of stockholders owning not less than one-third of the stock, by giving thirty days' public notice of the time and place of the meeting in the manner prescribed in the next preceding section for annual meetings: when any such meeting is called by the stockholders the object of the meeting shall be stated in such notice, and no business shall be transacted at such meeting except such as shall be so stated in the notice: if at any such meeting so called a majority in value of the stockholders are not represented in person or by written proxy, said meeting shall be adjourned from day to day, not exceeding three days without the transaction of any business: and if within said three days stockholders having at least a majority in interest of the stock do not attend in person or by proxy, and participate in such meeting, then the meeting shall be dissolved. At any annual meeting of the stockholders, and at any meeting held in pursuance of the provisions of this section, and at which not less than three-fourths of the capital stock is represented in person or by proxy, the stockholders present in person or by proxy, may by the affirmative vote of the holders of not less than two-thirds of the whole capital stock issued, so amend the articles of association of the company as to include new lines of route, alter the route, and change the termini of its railroad; and may increase or reduce the number of directors of such company, to any number not less than five nor more than thirteen, and may increase or diminish the amount of capital stock. Such amendments shall be signed by the president of the company, and the secretary of the company shall certify thereon under his hand and the corporate seal of the company, the fact of their adoption, and the time, place and by whom they were adopted, and thereupon they shall be filed with the auditor of public accounts and with the secretary of the Territory, who shall attach them to the original articles on file in their respective offices, and the said amendments shall, from the time of being so filed, constitute a part of the articles of association of the company, and thereafter so much of the original articles as conflict with such amendments shall be null and void. A certified copy of such amendments, made by the auditor of public accounts or the secretary of the Territory, shall be evidence in all courts

and places, of the adoption thereof, and of the facts therein stated.

§ 2324. s 10. At all general meetings of the stockholders, when two-thirds of the capital stock interest is present, either in person or by written proxy, they may remove any president, vice-president or director of such company and elect others in their stead; *Provided*, Notice of such intended removal shall have been given as required in the preceding sections.

Certain officers may be removed by stockholders.

§ 2325. s 11. In case it shall happen at any time, that an election of directors shall not be made on the day designated by the by-laws of the company, said company, for that reason, shall not be dissolved, if within one year thereafter they shall hold an election for directors in such manner as shall be provided by the by-laws; the directors may appoint all subordinate officers not provided in this act, who need not necessarily be stockholders; the said officers may be chosen at such times and for such terms as the directors may prescribe, who may also fix the compensation of each, and require them to give security for the faithful discharge of their respective duties as may be established by the by-laws of the company; any such officers may be removed at the pleasure of the board of directors and their places filled for the remainder of the term, and the said directors shall have power to fill all vacancies in the board, of all officers of the company occasioned by death, resignation, or otherwise.

Proceedings in case directors not elected on day designated by by-laws.

§ 2326. s 12. The directors of any railroad company organized under this act shall, for and in behalf of such company, make and execute all contracts of whatever nature and kind; and may fully and completely carry out the objects and purposes of such corporation, in such way and manner as they may think proper, and exercise generally the corporate powers of such company; and such directors shall also have full power to make such by-laws as they may think proper for the transfer of stock and management of the property and business of the company, and for prescribing the duties of officers, artificers and employees, and for the appointment of all officers, and all else that by them may be deemed needful and proper, within the scope and power of said company; *Provided*, That such by-laws be not disapproved by the stockholders, and be not inconsistent or in conflict with the laws of this Territory, or of the United States.

Power of the board of directors.

Directors to
cause records
to be kept.
Duties of sec-
retary.

§ 2327. s 13. The directors shall cause a book to be kept, called record of corporate debts, in which the secretary shall record all written contracts of the directors, and a succinct statement of the debts of the company, the amount thereof, and to whom due; which book shall, during all office hours, be open to the inspection of any stockholder or party interested.

Secretary to
keep record of
meetings of
company and
board of direc-
tors.

§ 2328. s 14. The secretary shall keep in a book provided for that purpose, a correct copy of the proceedings at each meeting of the company, as well as of the board of directors; such record showing the name of each director present at each meeting of the board, and the name of each director voting against any proposition, whenever said director may require the same placed on record. Prior to the adjournment of each meeting of the company or board of directors, the record of such meeting shall be read and approved. The secretary shall also keep such other books as may be deemed necessary, or prescribed by the directors, in which all the business transactions of the company shall be plainly and accurately kept, one of which shall be labeled book of stockholders, containing the names of all persons alphabetically arranged, who are, or shall have been stockholders in said company, showing their places of residence, if known, the number of shares of stock held by them respectively, the time when they became owners of such shares, and amount of cash paid to the company by them respectively, as also the time when they may have ceased to be stockholders; which book, during the office hours of said secretary, shall be open for the inspection of stockholders and creditors of the company or their personal representatives. The secretary shall also keep a transfer book, in which all transfers of stock shall be duly entered, and no transfer of stock of such company shall be valid until it shall have been entered therein; by an entry showing to and by whom transferred; the numbers and designation of the shares, the date of transfer, and duly attested by said secretary and approved by the directors.

Shall keep
transfer book,
what to be
entered there-
in.

Stock to be
personal estate
and transfer-
able.

§ 2329. s 15. The stock of such company shall be deemed personal estate, shall be transferred in the manner provided in the preceding section, and upon the books of the company, upon proper assignment and delivery, to the assignee, of the certificates of stock; but no share shall be

transferable till all the previous calls or assessments thereon have been fully paid in; any shareholder transferring his stock in the manner aforesaid, and the same being approved by the board of directors, shall, from and after the date of such approval, cease to be a stockholder in such company, and shall not be liable to any future calls from the directors nor for any debts of the company thereafter.

Shares not transferable until previous call and assessments paid.

§ 2330. s 16. The directors of such company may call in and demand from stockholders the sums by them subscribed, in equal instalments of not more than ten per cent. per month, unless otherwise stipulated in the articles of subscription, at such times as they may deem proper; notice of which shall be given to the stockholders personally, or shall be published once a week, for at least four weeks, in a newspaper having a general circulation in this Territory; if, after such notice has been given, any stockholder shall fail in the payment of the assessment made upon shares held by him, so many of such shares as may be necessary for the payment of the assessment on all the shares held by him, may be sold at public auction, to the highest bidder.

Directors may require payments of stock. Notice to be given.

How payment enforced.

§ 2331. s 17. Certificates of stock shall be issued signed by the president and secretary in such manner and upon such terms as the by-laws of the company may prescribe.

President and secretary must sign certificates of stock.

§ 2332. s 18. The president, secretary, and at least a majority of the directors, within thirty days after the payment of the last instalment of the capital stock, so fixed and limited by the company, shall make a certificate, stating the amount of capital, so fixed and paid in, which certificate shall be sworn to and subscribed by them, and filed in the office of the auditor of public accounts.

Certificate to be made when stock all paid in, where to be filed.

§ 2333. s 19. Every company incorporated under this act, or constructing or operating railways in this Territory, shall have power to cause such surveys for the proposed railroad to be made as may be necessary for the selection of the most advantageous route, and for such purposes their officers, agents and employees may enter upon the lands or waters of any person, subject to responsibility for all damages that may accrue; and may receive, hold, take and convey, by deed or otherwise, such voluntary grants and donations of real estate and other property of every description, as may be made to it, to aid and encourage the construction, maintenance and accommodation of such railroad; to

Powers and liability of corporation.

purchase, and by voluntary grants and donations, receive and take, and by its officers, engineers, surveyors and agents, enter upon and take possession of and hold and use in any manner they may deem proper, all such real estate and personal property as the directors may deem necessary for the construction and maintenance of such railroad stations, depots and other accommodations; and may lay out its road or roads, not exceeding nine rods wide, and construct and maintain the same, with a single or double track, with such appendages as may be deemed necessary for the convenient use of the same; and for the purposes of making embankments, excavations, ditches, drains, culverts, or for procuring timber, stone and gravel, or other materials, may take as much more land wherever they think proper, as may be necessary for the purposes aforesaid, in the manner hereinafter provided; and may construct their road along, across or upon any stream of water, water course, lake, roadstead, street, avenue, highway, or across any railway, canal, ditch or flume, which the route of its road shall intersect, in such manner as to afford security for life and property, but said company shall restore the stream or water course, road, street, avenue, highway, railroad, canal, ditch or flume thus intersected, to its former state as near as may be, or in a sufficient manner not to have necessarily impaired its usefulness or injured its franchises; and may cross, intersect, join and unite its railroad with any other railroad either before or after construction, at any point upon its route, and upon the grounds of such other railroad company with the necessary turnouts, sidings and switches and other conveniences in furtherance of the objects of its connections; and every company whose railroad is, or shall be hereafter intersected by any new railroad, shall unite with the owners thereof in forming such intersections and connections and grant the facilities aforesaid; and if the two companies cannot agree upon the amount of compensation to be made therefor, or the points or manner of such crossings, intersections and connections, the same shall be ascertained and determined by commissioners as hereinafter provided; *Provided*, That no railroad corporation must use any street, alley or highway, or any of the land or water within any city, town or other municipal corporation unless the right to use the same is granted by a majority vote of the city, town or municipal authorities from

which the right must emanate, and the county court of the respective counties of this Territory shall have power to designate at least one road eight rods wide in each county, on which no railroad shall ever be run: *Provided*, This section shall not be so construed to prevent railroads from crossing, as near as may be at right angles, any street or road across which its designated lines may pass.

§ 2334. s 20. The said company shall have power to take, transport, carry and convey persons and property on their railroad by the force and power of steam or of animals, or of any mechanical power, or by any combination of them, and may receive tolls or compensation therefor: to erect and maintain all necessary and convenient buildings, stations, depots, fixtures, and machinery for the accommodation and use of passengers, freight and business, and obtain and hold the lands and other property necessary therefor: to regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor, within the limits that may be prescribed by law: to regulate the force and speed of their locomotives, cars or other machinery used and employed on their road, and to establish, execute and enforce all needful rules and regulations usual and proper for railroad companies.

To take, transport, carry and convey persons and property on their railroad.

May use steam or animals.

To regulate transportation and compensation therefor.

§ 2335. s 21. If any such company cannot contract for the purchase of any real estate, or any right, title, or interest therein, necessary for any of the purposes aforesaid, from the person or persons owning the same, then such company may acquire a title to the same for the purposes herein expressed, by means of the special proceedings prescribed in this act.

How to acquire rights when unable to agree for purchase.

§ 2336. s 22. Said special proceedings shall be conducted substantially as follows: The said company shall file in the clerk's office of the probate, or district court of the county or district in which said real estate is situated, a petition verified according to law, stating therein the name of the company, the time when it was incorporated, that it still continues in legal existence, the principal termini of the proposed railroad, the description by metes and bounds, or by some accurate designation of the tract or tracts of land which said company desire to appropriate for the purposes mentioned in this act; that said tract or tracts of land are necessary for said purposes, that the line of said railroad has been surveyed

Petitions to probate or district court therefor.

Form and requisites of petition.

and a map thereof made (a copy of which shall be filed with said petition,) that said line has been adopted as the route for said railroad, together with the names of the persons in possession of said tract or tracts of land, and of those claiming any right, title or interest therein, as far as the same can be ascertained by reasonable diligence.

Where defendants in the proceedings.

§ 2337. s 23. The persons in occupation of said tract or tracts of land, and those having any right, title or interest therein, whether named in the petition or not, shall be defendants thereto, and may appear and show cause against the same, and may appear and be heard before the commissioners herein provided for, and in proceedings subsequent thereto, in the same manner as if they had appeared and answered said petition.

Court to appoint time for hearing petition; upon whom company to serve notice.

§ 2338. s 24. The said court shall, by order, appoint a time for the hearing of said petition; and the said company shall cause all the occupants and owners of said tract or tracts of land, as far as the same can be ascertained by reasonable diligence, to be personally notified of the pending of said petition, at least ten days before the hearing thereof, and if any of said owners are unknown, or do not reside in this Territory, the company shall cause a notice, stating the filing of said petition, the object thereof, the tract or tracts of land sought to be appropriated, and the time and place of the hearing of said petition, to be published for four successive weeks previous to the time of hearing, in a newspaper having a general circulation in this Territory.

How service made if person unknown or resides out of Territory.

Defendant to said petition may show cause.

§ 2339. s 25. The defendants to said petition may appear and show cause against the same, on or before the time set for the hearing thereof, or such other time as the hearing may be continued to; and upon satisfactory proof being made that the defendants have been duly notified of the pending of said petition as herein prescribed, the said court, if it shall be satisfied that the lands or any part thereof are necessary for any of the purposes mentioned in said petition, shall appoint three competent and disinterested persons as commissioners, to ascertain and assess the compensation to be paid to the person or persons having or holding any right, title or interest in, or to each of said tracts of land, for and in consideration of the appropriations of such lands to the use of said company.

Court may appoint three commissioners.

§ 2340. s 26. The said court shall appoint the time and place for the first meeting of said commissioners and the time for filing of their reports, and may give such further time as may be necessary for that purpose, if they shall not then have completed their duties.

Court to appoint time and place of first meeting commissioners.

§ 2341. s 27. The said commissioners shall meet at the time and place ordered, and before entering upon their duties shall be duly sworn by any person authorized to administer oaths, to honestly, faithfully and impartially perform the duties imposed upon them: said commissioners may issue subpoenas for witnesses for either party; may administer oaths and may adjourn from place to place, and from time to time as may be necessary for the proper discharge of their duties.

To take official oath, their powers and duties.

§ 2342. s 28. The said commissioners shall proceed to view the several tracts of land as ordered by said court, and shall hear the allegations and proof of said parties, and shall ascertain and assess the compensation for such land, to be paid by the said company to the person or persons having, or holding any right, title or interest in, or to the same: and in ascertaining and assessing such compensation they shall take into consideration and make allowance for any benefit or advantage that in their opinion will accrue to such person or persons, by reason of the construction of the railroad as proposed by said company: and they shall, on or before the time as ordered by said court, file in the said clerk's office, their report, signed by them, setting forth their proceedings in the premises.

To view premises and hear proofs.

To make report.

§ 2343. s 29. The said company, or any of the said defendants being dissatisfied with the decision of the commissioners may, within twenty days after the filing of said report, and after ten days' notice to the parties interested, move the court to set aside the report, and to order a new trial, as to any of the tracts of land: and upon good cause shown herefor, the said court may set aside the report as to such tract of land, and may recommit the matter to the same, or to other commissioners, who shall be ordered to proceed in like manner as those first appointed, but such matter shall not be more than twice committed to commissioners.

Parties dissatisfied may move court to set aside report, etc.

Other commissioners may be appointed.

§ 2344. s 30. Upon the expiration of twenty days after the filing of said report, or at such further time as may be appointed therefor, if the report has not been set aside as provided in the preceding section, and if the proceedings of

Report to be confirmed after twenty days.

*said commissioners appear to have been correctly done, the said court shall confirm said reports and certify the same thereon.

Property when
taken for cor-
poration.

§ 2345. s 31. Upon the compensation therein named being paid up, said company shall cause the said reports and certificates thereon, to be recorded in the recorder's office of said county, and the real estate, or the right, title or interest therein described in such report, shall be and become the property of said company for the purposes of its corporation, and shall be deemed acquired for, and appropriated to public use.

To be deemed
taken for
public use.

When and
where comp'y
to pay or
tender com-
pensation

§ 2346. s 32. Such company shall within thirty days after final confirmation of the report aforesaid, pay or tender the sum of money assessed by said commissioners for the compensation of each tract of land described in said report, and said payment or tender may be made to the person or persons interested therein, according to the amount or extent of the right, title or interest owned or held by them; or the payment may be made to the said clerk of the court in which such proceeding was had for said persons, and the same shall be deemed valid for all purposes whatsoever, as if the said sum of money had been personally paid to each and all the persons entitled thereto.

Court to direct
as to payment
of money.

§ 2347. s 33. The said court shall, at the time of the payment of the said sum of money to the clerk, direct and order the same to be paid over to the persons who shall, upon satisfactory proof, be entitled thereto.

"Person"
includes mu-
nicipal or
other incor-
porations.

§ 2348. s 34. In all proceedings in relation to the sale or appropriation of real estate, and ascertaining and renewing compensation therefor for railroad purposes, as prescribed in this act, the term "person" shall be deemed to include municipal or other corporations.

Corporation to
maintain
fences.

§ 2349. s 35. That any corporation operating a railway or railroad within this Territory which shall injure or kill any live stock, by running any engine or engines, car or cars over or against any such live stock, shall be liable to the owner or owners of such live stock for the damage sustained by such owner or owners by reason of such injuring or killing of such live stock, and any such corporation injuring or killing any live stock by running any engine or engines, car or cars, over or against such live stock, shall within ten days thereafter, notify the owner or owners of such live stock so killed or

injured, of the fact; and any corporation failing to comply with the requirements of this section, shall be liable to the owner or owners of such live stock so killed or injured, in the full amount of the damages sustained by the owner or owners of such stock, by reason of the killing or injuring. Any person or persons owning any live stock which shall be killed or injured in the manner set forth in this section, within six months after the said person or persons is or are notified of the said killing or injuring as provided herein, shall furnish the corporation having so killed or injured live stock, through the nearest agent, sworn evidence of the value of said live stock, and upon the payment by said corporation to the owner or owners of said live stock, of two-thirds of the value of said stock so ascertained to have been killed or injured, said corporation shall be released from further liability.

Persons owning live stock killed, must give notice to corporation.

§ 2350. s 36. A bell of at least twenty pounds weight must be placed on each locomotive engine, and be rung at a distance of at least eighty rods from the place where the railroad crosses any street, road or highway, and be kept ringing until it has crossed such street, road or highway: *Provided*, That sounding the locomotive whistle, at least one-fourth of a mile before reaching any highway crossing, shall be equivalent to ringing the bell, except in towns and at terminal places; and the whistle shall also be sounded for every street crossing while passing through towns during the prevalence of fogs, snow and dust storms; and all engines with or without trains must come to a full stop before crossing the track at grade of any other railroad at a distance not exceeding four hundred feet from the same, and must not proceed until the way is known to be clear, when two blasts of the whistle must be given at the moment of starting, and every person in charge of a locomotive, for each and every neglect, shall be deemed guilty of a misdemeanor, and said company shall also be liable for all damages which shall be sustained by any person by reason of such neglect.

Bell to be placed on locomotive, when to be sounded.

Proviso.

Sounding whistle equivalent to ringing bell.

§ 2351. s 37. Every such company shall start, and run their cars for the transportation of persons and property at such regular time as they shall fix by public notice; and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall within a reasonable time previous thereto offer for transportation at the place of

Cars to be run at regular times to be fixed by notice

Corporation to furnish accommodation for passengers and property.

starting, at the junction of other railroads, and at siding or stopping places established for receiving and discharging way passengers and freight; and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of tolls, freight or fare therefor; and if the company or their agents refuse to take and transport any passengers or property, or to deliver the same at the regular appointed places, they shall be liable to the aggrieved party for all damages that may accrue from such refusal including costs of suit and a reasonable attorney's fee.

Baggage, lumber and freight cars not to be placed in rear of passenger cars.

§ 2352. s 38. It shall not be lawful to place baggage, freight, merchandise or lumber cars, in rear of passenger cars, and for any violation of this section, the company shall be liable to the party complaining, in the sum of five hundred dollars, and the person, agent, directors or officers so causing the cars to be placed shall be guilty of a misdemeanor, and upon conviction, may be fined in any sum not exceeding five hundred dollars, or imprisonment not exceeding twelve months, or both, and should any accident happen to life or limb, by such unlawful arrangement of cars, the person, agent, or officer who so directed, or suffered such arrangement, shall be guilty of felony; and upon conviction, shall be imprisoned in the penitentiary for any term not less than one, nor more than ten years.

Company not liable if person injured was violating its regulations.

§ 2353. s 39. In case any passenger shall be injured on the platform of any car, or on any baggage, wood, gravel or freight cars, in violating the printed regulations of the company, posted up at the time in a conspicuous place, inside of its passengers cars then in the train; or in violation of verbal instruction given by any officer of the train, such company shall not be liable for the said injury.

Passengers refusing to pay may be put out of cars.

§ 2354. s 40. Any passenger refusing to prepay his fare, or toll on demand, may be put off the cars at any stopping place the conductor or employees of the company may elect.

Conductors, etc., to wear badges.

§ 2355. s 41. Every conductor, baggage master, engineer, brakeman or other employee of said railroad company employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap, or in some conspicuous place on the breast of his coat, a badge indicating his office or station, and the initial letters of the name of the company by which he is employed, and no collector or conductor, without such badge, shall demand or be entitled to receive from any

passenger, any fare, or ticket, or exercise any of the powers of his office or station, or interfere with any passenger or property.

§ 2356. s 42. A check shall be fixed to every package or parcel of baggage when taken for transportation, by the agent or employee of such company, and a duplicate thereof given to the passenger or person delivering the same; and if such check be refused on demand, the company shall pay to such person the sum of twenty dollars, to be recovered as in action of debt; and further, no fare or toll shall be collected or received from such passenger; and if such person shall have paid said fare, the same shall be returned by the conductor in charge of the train, and on the passenger producing said check, if said baggage or parcel shall not be delivered by the agent or employee of said company, the passenger may be a witness in any suit to prove the contents or value of said baggage, and for the recovery of damages, in any court having jurisdiction.

§ 2357. s 43. Every company organizing under this act or constructing or operating any railroad in this Territory shall, within a reasonable time, after their road shall be finally located, cause a map to be made of the land taken and obtained for the use thereof; and so far as necessary the boundaries of the several counties through which the road may run, and file the same in the office of the auditor of public accounts; and also like maps of the parts thereof located in the different counties, and file the same in the office of the recorder for the county in which said parts of such road shall be, there to remain as a record; maps and profiles shall be certified by the chief engineer, the president and secretary of the company, shall be kept in the office of the secretary of the company; subject to examination by all parties interested.

§ 2358. s 44. If such railroad company shall not within two years after the filing of its original articles of association begin the construction of its road and expend thereon at least five per cent. of the amount of its capital stock, and finish the road and put the same in full operation within ten years, its act of incorporation shall be void.

§ 2359. s 45. Any company constructing or operating lines of railroad in this Territory, shall be liable for all damage which may be sustained through destruction of

No authority without such bridge

Check to be annexed to baggage.

Duplicate to be given person owning baggage.

Map of land taken and obtained to be filed with auditor and county recorder of different counties

When acts of incorporation to become void by non-user.

What damages corporation liable for.

property caused by fire communicated from their locomotive engines, or neglect on their part to make good and sufficient crossings at points where lines of travel cross the railways, the damage so sustained to be determined before the nearest court having jurisdiction, and to be collected, in case payment is refused, by attachment and sale of any company property which can be found.

Companies
may consoli-
date.

§ 2360. s 46. It shall be lawful for any railroad companies organized under the laws of this Territory to consolidate their capital stock, debts, property, assets and franchises with any railroad company or companies organized under the laws of any State or other Territory.

Conditions,
provisions, re-
strictions, etc.,
under which
consolidations
shall be made

§ 2361. s 47. Said consolidations shall be made under the conditions, provisions, restrictions, and with the powers hereinafter in this act mentioned, that is to say, the presidents or secretaries of the several corporations proposing to consolidate, may enter into a joint agreement under the corporate seal of each company for the consolidation of said several companies, and prescribing terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers, and their places of residence, the number of shares of capital stock, the principal place of business of the new company in each State or Territory traversed by the line of railway, and such other provisions as may be required by law to be inserted in an original certificate of incorporation, the manner of converting the capital stock of each of said companies into that of the new corporation, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect such new organization and consolidation of said companies; said agreement shall be authorized or ratified by the board of directors of each company consolidating, and shall be submitted to the stockholders of each of the said companies or corporations, at a meeting thereof called for the purpose of taking the same into consideration. Due notice of the time and place of holding such meeting and the object thereof, shall be given by written or printed notices, addressed to each of the persons in whose names the capital stock of said companies stands on the books thereof, and delivered to such persons respectively, or sent to them by mail when their post office

Notice.

address is known to the company, and also by a general notice published in some newspaper in the city, town or county where such company has its principal office or place of business, for the period of thirty days before such meeting is to be held, and at the said meeting of stockholders, the said agreement shall be considered, and a vote be taken thereon for the adoption or rejection of the same, each share entitling the holder thereof to one vote, and said ballots shall be cast in person or by proxy, and if two-thirds of all the votes of all the stockholders shall be for the adoption of said agreement, then that fact shall be certified thereon by the secretary of the respective companies under the seal thereof, and the agreement so adopted, or a certified copy thereof, shall be filed in the office of the auditor of public accounts, and in the office of the secretary of this Territory, and shall from thence be deemed and taken to be the agreement and act of consolidation of said companies, and a copy of said agreement and act of consolidation, duly certified by said auditor or by the Secretary of the Territory, under his official seal, shall be evidence of the existence of said new corporation; *Provided*, That if the mode of ratifying said agreement of consolidation in such other State or Territory shall vary from the mode herein prescribed, then said agreement may be ratified by the railroad company or corporation of such other State or Territory in the mode prescribed by the laws thereof.

§ 2362. s 48. Upon the making and perfecting the said agreement and act of consolidation, as provided in the preceding sections, and filing the same as aforesaid, the several corporations parties thereto shall be deemed and taken to be one corporation, by the name provided in said agreement and act, possessing within this Territory all the rights, privileges and franchises, and subject to all the restrictions, disabilities, duties and liabilities of each of such corporations so consolidated.

§ 2363. s 49. Upon the consummation of said consolidation as aforesaid, all and singular the rights, privileges and franchises of each of said corporations parties to the same, and all the property, real, personal and mixed, and all debts due on whatever account, as well as of stock, subscriptions and other things in actions belonging to each of such corporations, shall be taken and be deemed to be transferred to and vested in such new corporation without further act or deed.

and all property, all rights of way, and all and every other interest shall be as effectually the property of the new corporation as they were of the former corporations, parties to said agreement; and the title to real estate, either by deed or otherwise, under the laws of this Territory, vested in either of such corporations, shall not be deemed to revert or be any way impaired by reason of this act; and all debts, liabilities and duties of either of said companies shall henceforth attach to the said new corporation, and be enforced against it to the same extent as if said debts, liabilities had been incurred or contracted by it.

Must establish
office in the
Territory.

§ 2364. s 50. Such new company shall establish an office at some point in this Territory on the line of its road, and may change the same at pleasure, giving public notice thereof, of the same, in some newspaper published and having general circulation in the Territory.

Suits may be
brought and
maintained
against.

§ 2365. s 51. Suits may be brought and maintained against such new company in any of the courts of this Territory for all causes of action, in the same manner as against other railroad companies organized under the laws of this Territory.

Road and
other property
subject to
taxation.

§ 2366. s 52. That portion of the road of such consolidated company, and all its real estate and other property within this Territory, shall be subject to like taxation and assessed in the same manner as property of other railroad companies within this Territory.

May lease
other roads,
etc.

§ 2367. s 53. Any railroad company organized under the laws of this Territory, may lease and operate any part, or all of a railroad constructed by another company, within or without this Territory; and any railroad company organized under the laws of the United States, or any State or Territory may lease and operate any part or all of a railroad constructed by another company within this Territory. Such leases may be made on such terms and conditions as may be mutually agreed upon between said companies.

Companies
have power to
issue bonds
and mortgage
property.

§ 2368. s 54. All railroad companies heretofore organized, or which may hereafter be organized pursuant to the laws of this Territory, shall have power to issue bonds for such sum or sums, and payable at such times and places, and drawing interest at such rates as they may deem proper; and they are severally empowered hereby to execute trust deeds, or mortgages, or both, upon the whole or any part of their

railroad lines, property, franchises, incomes and profits acquired, or to be acquired to secure the payment of such bonds and interest; and if such bonds are sold below their par value, they shall be binding and valid, according to their terms.

§ 2369. s 55. Any trust deed or mortgage made upon the lands, roads, or other property of any such railroad company shall bind, and be a valid lien upon all the property mentioned in such deed or mortgage, including rolling stock, machinery and other personal property; and a purchaser at a foreclosure sale, or under a trust deed, shall have and enjoy all the rights of a purchaser at an execution sale.

Trust deeds and mortgages to be lien upon property mentioned.

§ 2370. s 56. Such trust deeds or mortgages may, by their terms, include and cover, not only the property of the company making them at the date of execution thereof, but property of every kind, which may thereafter be acquired by such company, together with the material and property necessary for the repair, use and operation of such road, and the same, when so stated, shall be as valid and binding, and as effectual to pass the property as it would be were it in the possession of such company at the time of the execution of such instrument.

Trust deeds or mortgages may cover property thereafter acquired.

§ 2371. s 57. Every deed or mortgage made by any railroad company, organized as aforesaid, shall be recorded in the office of the county recorder of each organized county through which such road shall run in this Territory and in any county where it may hold lands subject to such deeds or mortgage, and such records shall be notice to the whole world of the rights of all parties having interest under the same; and for this purpose, and to secure the rights of the mortgages or parties interested under such mortgages or trust deeds, so executed and recorded, the rolling stock, machinery, personal property and material necessary for the operation and the repairs of the road of such company, belonging to the same and appertaining thereto, shall be deemed fixtures on and a part of the road; and such mortgages, or trust deeds so recorded, shall have the same effect both as to notice and otherwise, as they have to real estate covered by them, notwithstanding the fact that the possession of such property remain with the mortgagees.

Deeds and mortgages to be recorded in the recorder's office of each county, etc.

Record to be notice of the rights of parties

§ 2372. s 58. Every deed of trust or mortgage heretofore executed, by any railroad corporation, organized pur-

Trust deeds
and mortgages
heretofore
executed vali-
dated.

suant to the laws of this Territory, is hereby declared valid, legal and binding, to the full extent and scope of the terms and conditions of such deed or mortgage; and the records of such instruments, heretofore made in the county records of the several counties into or through which such road passes, shall be deemed, and is hereby declared, to impart notice to all the world of the contents of such deeds or mortgages, and of the rights of those claiming under them; and they shall in every particular be as effectual security as if executed and recorded after the approval of this act.

Record to be
notice, etc.

Corporations
may be formed
to purchase
roads.

§ 2373. s 59. Railroad corporations may be formed pursuant to the laws of this Territory for the purpose of buying any railroad property situated therein, when the same is to be sold under trust deed, mortgage, or private sale; and any railroad corporation heretofore formed pursuant to the laws of this Territory, which had for its purpose the purchase of railroad property already constructed, is hereby declared a valid corporate body, and any purchase of railroad property by such corporation that was sold pursuant to trust deed, mortgage, judgment and decree of court, or private sale, is hereby made valid and binding.

Corporations
heretofore
formed vali-
dated.

(Act) CHAPTER IV.

ASSESSMENTS.

SECTION.	SECTION.
2374 Directors may levy assessments.	2385 Sale must be to highest bidder, for cash.
2375 Assessments; limitations.	2386 Who is highest bidder.
2376 Assessments; when prior assessments unpaid.	2387-2388 Corporation may bid on the stock; while held is not assessable; can not be voted.
2377 Order of assessment, what to state.	2389 Time for assessment or sale; may be extended.
2378 Secretary to give notice; form of.	2390 Failure to publish notice does not invalidate assessment.
2379 Notice of assessment.	2391 Action to recover stock, on what terms sustainable.
2380-2381 Notice of delinquent stock; form of.	2392 Proof of publication.
2382 How long to be published.	2393 Liability of paid-up stock to assessment.
2383 Irrigation companies need not publish notice in newspaper.	
2384 On publication, company has jurisdiction to sell.	

§ 2374. s 1. The directors of any corporation existing under the laws of this Territory, after one-fourth of its

capital stock has been subscribed, may, for the purpose of paying expenses, conducting business or paying debts, levy and collect assessments upon the subscribed capital stock thereof in the manner and form and to the extent hereinafter provided.

Directors may
levy assess-
ments.

§ 2375. s 2. No assessment shall exceed the ten per cent. of the amount of the capital stock named in the articles of incorporation except in the cases in this section otherwise provided for, as follows:

Amount of
assessment,
limitation.

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its obligations or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon its capital stock, or if a less amount be sufficient, then it may be for such a percentage as will raise that amount.

2. The directors of railroad corporations may assess the capital stock in instalments of not more than ten per cent. per month, unless the articles of incorporation otherwise provide.

§ 2376. s 3. No assessment shall be levied while a portion of a previous one remains unpaid, unless:

No assessment
shall be levied
while previous
one is unpaid.

1. The power of the corporation has been exercised in accordance with the provisions of this chapter for the purpose of collecting such previous assessment.

2. The collection of such previous assessment has been enjoined; or,

3. The assessment falls within the provisions of preceding sections.

§ 2377. s 4. Every order levying an assessment must specify the amount thereof, when, to whom, and where payable; fix a day subsequent to the full term of the publication of the assessment notice on which the unpaid assessment shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment, and a day for a sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

What order
levying as-
sessment must
state.

§ 2378. s 5. Upon making the order the secretary shall cause to be published a notice thereof, in the following form:

Secretary must
give notice.

(Name of corporation in full, location of principal place of business.) Notice is hereby given that at a meeting of

Form of.

the directors, held on (date), an assessment of (amount) per share was levied on the capital stock of the corporation, payable (when, to whom and where). Any stock upon which this assessment may remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and unless payment is made before, will be sold on the (day appointed) to pay the delinquent assessment, together with cost of advertising and expense of sale.

(Signature of secretary, with location of office.)

Notice of assessment, how given.

§ 2379. s 6. The notice must be served personally on each stockholder, or, in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week for four successive weeks, in some newspaper of general circulation, published in Salt Lake city, also in some newspaper published in the county where the works of the corporation are situated, if a paper be published therein.

Secretary must publish notice of delinquent stock

§ 2380. s 7. If any portion of the assessment mentioned in the notice, remain unpaid on the day specified therein for declaring the stock delinquent, the secretary shall, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for, shall have been published, a notice substantially in the following form:

Form of.

(Name of corporation in full, location of principal place of business.) Notice.—There are delinquent upon the following described stock, on account of assessment levied on the date), (and assessments levied previous thereto if any) the several amounts set opposite the names of the respective share holders as follows: (Names, number of shares number of certificates, number of shares, amount,) and in accordance with law (and order of the board of directors, made on the (date) if any such order shall have been made,) so many shares of each parcel of such stock as may be necessary, will be sold at the particular place on the (date) at (the hour) of such day to pay delinquent assessment thereon, together with the cost of advertising and expenses of the sale.

What notice must state

§ 2381. s 8. The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where the certificate may not have been

issued to parties entitled thereto. In which case the number of shares and amount due thereon, together with the fact that the certificates of such shares have not been issued must be stated.

§ 2382. s 9. The notice, when published in a daily How long the notice must be published. paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale; when published in a weekly paper, must be published each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

§ 2383. s 10. The three preceding sections shall not be 1-2383. Companies not incorporated are not subject to the provisions of this section. construed as requiring companies incorporated for irrigating purposes to publish in any newspaper the notices, or either of them, therein mentioned; but personal service of said notice, or notices in writing sent by mail, post paid, addressed to each stockholder at his place of residence shall in all cases be deemed sufficient. The affidavit of the person making personal service, or mailing the same, shall be sufficient proof of such service.

§ 2384. s 11. By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment, or costs of advertising, remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of advertising and sale. Publication of notice gives corporation power to sell.

§ 2385. s 12. On the day, at the place and at the time appointed in the notice of sale, the secretary shall, unless otherwise ordered by the board of directors, sell, or cause to be sold, at public auction to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon according to the terms of sale; if payment is made before the time fixed for sale, the party paying shall only be required to pay the actual costs of advertising in addition to the assessment. Stock must be sold to highest bidder for cash.

§ 2386. s 13. The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share, is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and costs. Who is highest bidder.

Corporation
may bid in the
stock.

§ 2387. s 14. If at the sale of stock no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation through the secretary, president, or any director thereof, at the amount of the assessment, costs and charges due; and the amount of the assessments, costs and charges shall be credited as paid in full on the books of the corporation, and the entry of the transfer of the stock to the corporation shall be made on the books thereof. While the stock remains the property of the corporation, it is not assessable, nor shall any dividends be declared thereon, but all assessments and dividends shall be apportioned upon the stock held by the stockholders of the corporation.

Such stock not
assessable,
etc.

Corporation
has legal title
to stock pur-
chased; such
stock cannot
be voted.

§ 2388. s 15. All purchasers of its own stock vest the legal title to the same in the corporation, and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit in accordance with the by-laws of the corporations, or vote of the majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

Dates fixed
for assess-
ments or sales
may be ex-
tended.

§ 2389. s 16. The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time, for not more than thirty days, by order of the directors entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice shall be effectual, unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

Failure to pub-
lish notice
does not inval-
idate assess-
ment.

§ 2390. s 17. No assessment is invalidated by a failure to make publication of the notices herein provided for, nor by the non-performance of any act required in order to enforce payment of the same; but in case of any substantial error or omission in the course of proceedings for collection all previous proceedings, except the levying assessment, are void, and publication must be begun anew.

§ 2391. s 18. No action shall be sustained to recover stock sold for delinquent assessment upon the ground of irregularity or defect of the notice of the sale, or defect or

irregularity in the sale, unless the party seeking to maintain such action first pays or tender, to the corporation or the party holding the stock sold, the sum for which the same was sold, together with all the subsequent assessments which may have been paid thereon, and interest on such sums, from the time they were paid, and no such action shall be sustained, unless the same is commenced by the filing of a complaint, and the issuing of a summons thereon, within six months after such sale was made.

No action shall be sustained to recover stock, until amount realized is first paid or tender thereof

§ 2392. s 19. The publication of notice required by this chapter, may be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published, and the affidavit of the secretary or auctioneer shall be *prima facie* evidence of the time and place of sale, of the quantity and particular description of the stock sold and to whom and for what price, and of the fact of the purchase money being paid. The affidavit shall be filed in the office of the corporation, and copies of the same, certified by the secretary thereof, shall be *prima facie* evidence of the fact therein stated. Certificates signed by the secretary and under the seal of the corporation shall be *prima facie* evidence of the contents thereof.

Proof of publication.

§ 2393. s 20. Any person who is the holder of full paid up capital stock, shall not be liable for any assessments or for any indebtedness of the corporation otherwise than by sale of his or her stock, as herein provided, unless distinctly provided for in the articles of incorporation, which articles, or incorporation, shall not be changed in this respect without the consent of all the stockholders in writing.

No person liable for assessment, etc., unless by sale of stock.

CHAPTER II.

FIRE INSURANCE COMPANIES.

SECTION.	SECTION.
2394 Two hundred thousand dollars of paid-up capital required.	2398 Fees of secretary of the Territory.
2395 Certificate of authority necessary to an agent.	2399 Company may incorporate.
2396 Annual statement required to be published.	2400 How company may invest capital and funds.
2397 Agent may solicit insurance in other companies, when.	2401 Auditor to examine securities and issue certificate; when filed
	2402 Penalty for violating provisions.

Unlawful to do business without paid-up capital of \$200,000.

March 13, 1881.

March 10, 1886.

§ 2394. s 1. That it shall be unlawful for any fire insurance company, association, corporation or partnership incorporated by or under or organized pursuant to the laws of any foreign government, any State or Territory of the United States, or any person or persons, directly or indirectly to take any risks or transact any business of fire insurance in this Territory, unless possessed of an actual paid-up capital of not less than two hundred thousand dollars, except as hereinafter provided.

Unlawful for agent of any company to transact business without certificate of authority; Statement must be filed in secretary's office.

§ 2395. s 2. It shall be unlawful for any agent of any fire insurance company to transact the business of fire insurance within this Territory, unless the insurance company shall have first obtained a certificate of an authority from the secretary of the Territory, which certificate shall be issued to said agent upon his filing with said secretary, a statement, sworn to by an officer or manager of said company, showing.

1. The name and locality of the company.
2. The amount of capital stock.
3. The capital paid up.
4. The amount of its assets and liabilities.
5. Net surplus over all liabilities.
6. The name of its attorney or agent for the Territory, upon whom service or process in any civil action, against said company, may be made.

7. Receipts and expenditures during the year.

§ 2396. s 3. The statement referred to in section 2 shall

be renewed annually, in the month of April of each year, and a copy thereof certified by the secretary of the Territory shall be published by each company, on, or before the 30th day of April, of each year, at least four times, in some newspaper published in this Territory, and having general circulation therein; *Provided*, That in case of companies organized in foreign lands, the filing and publishing of the annual statement may be done on or before July 30th, of each year.

Annual statement, when to be made.
March 10, 1886.

Exception as to foreign companies.

§ 2397. s 4. It shall be lawful for the agent of a company or companies which have complied with the provisions of this act, to procure insurance through such companies, their officers or agents, from other insurance companies having a paid-up capital of not less than two hundred thousand dollars.

March 13, 1884.
March 10, 1886.
Agent may sell insurance in other companies, when.

§ 2398. s 5. The secretary of the Territory shall be entitled to the following fees herein: For filing statements mentioned in section 2, three dollars; for issuing certificate of authority, two dollars; for issuing each subsequent certificate of authority to other agents of the same company, one dollar.

Fees of secretary.

§ 2399. s 6. It shall be lawful for any number of persons to associate themselves together for the establishment of a fire insurance company of this Territory, and they shall be deemed a body corporate, authorized under the laws of the Territory to transact fire insurance business, on complying with the provisions of Chapter I, of Chapter XLV., Laws of Utah, 1884, [Chap. I, Part Fourth,] relating to corporations for general purposes; *Provided*, That it shall not be lawful for any such company to transact fire insurance business in this Territory, unless it shall have a subscribed capital of not less than two hundred thousand dollars, fifty per cent. of which shall have been paid up, and shall have complied with the provisions of this act.

When persons may incorporate.
March 10, 1886.

§ 2400. s 7. It shall be lawful for any fire insurance company incorporated under the laws of this Territory to invest its capital and funds accumulated in the course of its business, or any part thereof, in bonds of the United States; in real estate within the Territory; in mortgages on real estate within the Territory; in bonds of any school district or incorporated city of the Territory, authorized by the Legislature to be issued; in stocks or bonds of any solvent dividend-paying institutions other than mining corporations, incorporated under the laws of the Territory; to change and re-invest

How companies may invest capital and funds.
March 13, 1884.

Promise.

the same as occasion may from time to time require; and to lend the same, or any part thereof, on the security of such above-named property: *Provided, always,* That the current market value of such property shall be at the time of investment at least fifty per cent. more than the sum loaned thereon.

Auditor of public accounts must examine securities and issue certificate; certificate to be filed in secretary's office.

§ 2401. s 8. It shall be the duty of the auditor of public accounts to examine the securities and investments of every fire insurance company organized under the laws of this Territory, and to approve the same, and to issue to each company, so incorporating, a certificate approving its securities, which certificate shall be filed with the secretary of the Territory. No fire insurance company shall have authority to commence business until its securities shall have been approved by the auditor and the certificate of approval is filed in the secretary's office. The auditor shall be entitled to receive and collect from each company for each day or fraction thereof occupied in examining said securities, the sum of ten dollars.

Penalty.

§ 2402. s 9. Any person violating any of the provisions of this act shall be guilty of a misdemeanor.

CHAPTER III.

IRRIGATION COMPANIES.

AN ACT COMPILING THE LAWS RELATING TO THE INCORPORATION
OF IRRIGATION COMPANIES.

Approved March 13, 1884.

SECTION.	SECTION.
2403 Organization of irrigation districts.	2416 When lakes or ponds may be used as reservoirs.
2404 Citizens of district may form a company, how.	2417 Ditches, etc., to become property of district; how money raised to keep them in repair, etc., proceedings in case of sudden emergency.
2405 Trustees to locate canal, etc., and report to county court.	2418 Property exempt from taxation.
2406 County court to provide for taking vote of owners of benefited land; who entitled to vote; how questions submitted.	2419 Trustees may purchase land for ditches, etc.
2407 Two-thirds vote necessary; tax, how collected.	2420 When land for may be condemned.
2408 Effect of less vote.	2421-2422 Trustees, when to enter and take title for district.
2409 Officers, how to qualify.	2423 Penalty for injuring property.
2410 Term of office.	2424 Damages, when company liable for; can not interfere with prior rights.
2411 Elections to be held annually.	2425 Rights to repeal, etc., reserved.
2412 Trustees to elect one of their number president; fill vacancies; may make by-laws; may appoint agents, etc.; annual report.	2426 Persons who had constructed canal, etc., prior to act, authorized to organize under it.
2413 Power of trustees.	2427 This act not to prevent organization of private corporations.
2414 Proceedings in case benefited lands not legally claimed.	
2415 When power of district may be extended beyond the county.	

§ 2403. s 1. Be it enacted, etc.: That upon the majority of the citizens of any county or part thereof, representing to the county court that more water is necessary, and that there are streams or part of streams unclaimed or unused, which, if brought out of their natural channels and thrown upon tracts of land under cultivation, or to be put under cultivation, can be of value to the interests of agriculture, the county court having jurisdiction may proceed to organize the county, or part thereof, into an irrigation district; and thereafter the landholders of such district shall be equally entitled to the use of the water in, or to be brought into such district,

Organization
of irrigation
districts.

according to their acknowledged rights: *Provided*, Such landholders pay their proportion of the expense incurred in the construction and keeping in repair of the necessary canals, flumes, dams or ditches.

Citizens of district may form company; number of trustees; decide how tax levied.

§ 2404. s 2. The citizens of an irrigation district, when so organized for the purposes provided in the preceding section, may, in mass meeting, proceed to the formation of a company, by electing, *viva voce*, not less than three nor more than thirteen trustees, a secretary and a treasurer. Notice of the time, place and object of said mass meeting shall be given by the clerk of the county court, at least ten days previous, by advertising three times in some newspaper having general circulation in the county, and by posting up notices in three public places in the district.

Trustees to locate canal, etc., and report to county court.

§ 2405. s 3. It shall be the duty of the trustees so elected to locate the proposed canal or ditch, determine the amount and quality of the land to be benefited thereby, to estimate the cost, including dams, flumes, locks, waste weirs and all the appurtenances belonging thereto, the amount per acre of the percentage on taxable property which will be necessary to construct the same.

Duty of county court after public notice to hold an election; question to be submitted.

§ 2406. s 4. It shall then be the duty of the trustees to make a report to the county court of the location and estimate provided for in section 3 of this act: also to call a meeting of the holders of the lands to be benefited by the proposed canal or ditch, at which a copy of said report shall be presented, and the said landholders shall vote "yes" or "no" upon the following questions:

1. Do you mutually agree to pay——per acre, land tax, to construct the proposed canal or ditch?

2. Do you approve the action of the mass meeting in the election of officers?

Notice shall be given by the trustees at least ten days previous to the time appointed for such meeting, by advertising at least three times in some newspaper having general circulation in the county, and by posting up notices in three public places in the district. Said advertisement and notice shall state distinctly the time and place and object of such meeting, and be signed by a majority of the trustees and the secretary. The voting at said meeting shall be by ballot, and the chairman and secretary of said meeting shall be the judge and clerk of the election. A ballot box shall be provided by

the trustees, and each voter shall present his ballot to the judge of election, who shall deposit it in the box, and the clerk shall write the name of the voter in a poll list or book which shall also be provided by the trustees. No person shall be entitled to vote at said meeting or election unless he is a landholder in the district. Immediately after the close of the election, the ballots shall be openly counted by the judge and clerk, assisted by two persons chosen by the voters present. A certificate of the results of the election, signed by the persons who counted the votes, shall be forwarded at once to the clerk of the county court by the judge of said election.

§ 2407. s 5. If upon counting the votes it shall appear that two-thirds of the votes polled have been answered in the affirmative, then the tax so agreed upon shall be a law in the said irrigation district; and the tax when collected shall be paid over to the treasurer of said company on his order: *When two thirds vote for tax it becomes a law. Proviso.* That not exceeding one-half of the tax so agreed upon shall be collected at one time, and the residue to be collected as the work progresses: *Provided further,* That if the first estimate prove insufficient for the construction of the canal or ditch with its appurtenances, then additional taxes may be assessed in the same manner as hereinbefore provided until the said canal or ditch is completed. *Additional proviso.*

§ 2408. s 6. If less than two-thirds of the votes polled are answered in the affirmative, then all proceedings under this act shall be null and of no effect: *When proceedings are null and void. Proviso.* That if there are objections to the officers so elected by the mass meetings, the electors may write other names on their tickets; the persons having the most votes to be declared elected, and it shall be the duty of the county clerk to notify such officers forthwith of their election.

§ 2409. s 7. Within twenty days after receiving such notice, the officers so elected shall file bonds in the office of the clerk of the county court, conditioned for the faithful performance of their several duties; the amount of such bonds to be declared by the county court having jurisdiction. *Bonds to be given and filed*

§ 2410. s 8. The term of office of the first trustees, secretary and treasurer, shall be till the next general election; and thereafter for two years, and until their successors are elected and file bonds. *Term of office.*

Elections to be held annually.

§ 2411. s 9. All subsequent elections for determining the rate of tax, shall be held annually on the first Monday in December, and for the election of company officers, biennially, on the same day, at such time and place within the district as shall be designated by the trustees, at which time the number of trustees may be changed by a two-thirds vote to not less than three nor more than thirteen. Notice of said election shall be given and the election conducted and certificates thereof returned, as provided in section 4 of this act, and the officers elected shall give bonds as provided in section 7 of this act. The rate of tax determined at said election by a majority vote shall be a law in said irrigation district, and shall constitute a permanent lien on the interest of the taxpayer in said canal or ditch and his right to the use of the water therein flowing, from the day of assessment: *Provided*, That no tax created or payable by this act shall be or create a lien upon the land.

Trustees to elect one of their number president and to fill vacancies in board.

§ 2412. s 10. The trustees at their first meeting shall elect one of their number president, and it shall be their duty and they shall have power to fill any vacancy which may occur in the board by death, change of residence, or otherwise; and the persons chosen for this purpose shall hold office until the next annual election. The trustees shall also have power to meet at such times and places as they may deem expedient to make by-laws, rules and regulations necessary to carry into effect the objects of the people; to appoint agents, subordinates and officers, and employ such workmen as may be requisite; to appoint assessors and collectors, or make agreement with the county assessors to assess and collect the tax, and notify collectors when additional instalments of the tax will be needed, to construct and complete said canals or ditches, with all necessary appurtenances thereto; to cause to be kept an accurate account of all receipts and disbursements, and to complete said canals and ditches, and settle all accounts of the same. Said trustees shall make an annual report of their proceedings under this act to the county court on or before the first day of February, and shall file with the clerk of the county court a map of said irrigation district, showing the location and subdivision of land therein and of the company's canals and ditches.

May make by-laws and regulations: may appoint agents, officers, etc.

Must make annual report

Power of trustees.

§ 2413. s 11. The trustees shall have power to sue and be sued, plead and be impleaded, to have and to hold all such

real estate and personal property as may be necessary to construct the contemplated ditch or canal, including all appurtenances belonging thereto.

§ 2414. s 12. If any part of the lands to be benefited by the proposed ditch or canal are not legally claimed, then such lands may be appraised by the trustees and shall be held and the possession of them sold by the trustees, as opportunity may offer, and the estimated amount of funds necessary to complete such canal or ditch shall be decreased by the estimated value of such lands, previous to the levy and assessment of any tax.

Proceedings in case lands to be benefited are not legally claimed.

§ 2415. s 13. Where the streams to be taken out for irrigation purposes come from counties other than the one in which the district is situated, but where there are no existing claims to the water and where no individual or settlement will be injured thereby, then the power of said irrigation district is hereby extended to said other county, insomuch as said extension may be necessary for the construction of dams to turn the waters, and ditches or canals with all necessary appurtenances as may be necessary to convey the same to where it is to be used.

In what case power can be extended to another county.

§ 2416. s 14. Where lakes or ponds in natural basins have outlets, or where such can be made by dams across hollows, such lakes or ponds may be used as reservoirs, to store water for lands lying on lower levels; and the people of any irrigation district may, under the provisions of this act, construct such artificial or use such natural basins for irrigation purposes; *Provided*, The waters of such lakes or ponds are in no case to be raised, by dams or otherwise, so as to interfere with or damage settlers upon the margin thereof.

When lakes or ponds may be used as reservoirs.

§ 2417. s 15. Upon the construction or partial construction of any canal, ditch or reservoir contemplated in this act, they shall become the property of the irrigation district; and thereafter all funds necessary for repairs upon said canal, ditch or reservoir, and for keeping the same in order, or for altering or enlarging the same may be levied by a tax upon the lands benefited, the landholders in the district to vote upon the same in the manner heretofore provided for in this act. And in case of any sudden emergency, caused by inundation or otherwise, said trustees are hereby authorized and empowered to make such repairs, or take such measures as they may deem necessary to preserve the canals, or ditches,

When to become the property of irrigation district.

Tax may be levied for repairs.

Proceedings in case of sudden emergency.

or other works of said company or district, and for payment of the expenses so increased, the trustees are hereby authorized and empowered to levy a tax for the necessary amount upon all the lands of said district benefited by such canals or ditches, and said tax may be collected in the same manner and at the same time, if necessary, as provided for the collection of other taxes in said district.

§ 2418. s 16. All property or money belonging to any irrigation district, in the hands of the trustees to be expended by them under the provisions of this act, is hereby exempted from all city, county and Territorial taxes.

§ 2419. s 17. After any canal or ditch shall have been laid out under this act, or under any special charter where other provision has not been made, the trustees or company may agree with the owners of land through which it will pass for the purchase of so much thereof, as may be necessary for the making of the canal or ditch, and the appurtenances thereto belonging.

§ 2420. s 18. In every case where the owner of the land so required, shall absent himself from the county, or shall not, from any cause, be capable in law so to agree, or shall refuse to agree, or ask an exorbitant price, the value of such land and the damages to the owner thereof shall be ascertained in the following manner:

1. The owner of or claimant to such land and the trustees may each select a referee, and in case of disagreement they two may select a third, and these referees shall proceed to determine the value of the land under controversy, and assess the amount of damages, if any, which each owner of lands or improvements has sustained, or will sustain, in consequence of the canal or ditch.

2. The appraisal, with a description of the land so appraised, shall be acknowledged by the referees signing it, before the clerk of the county court of the county in which the lands are situated, and when so acknowledged, it shall be filed in the said clerk's office within ten days after it shall have been made. In case the occupant or claimant shall refuse or neglect to select a referee as herein provided, the trustees may petition the district court of the district in which the land is situated, for the appointment of three or more commissioners to condemn the land and fix and determine the damages; said commissioners to be appointed upon such

Property
exempt from
taxation.

Trustees may
purchase
lands for
canal or ditch.

Proceedings
in case owners
of land absent
or cannot
agree with
trustees as to
price.

notice to the complainant or occupant as said court shall direct. Said commissioners shall report to said court their award and determination for approval or disapproval. The motion for approval of said award shall be heard on such notice as the court shall direct.

§ 2421. s 19. The trustees, upon payment to the right-
ful claimant of the several sums assessed in the appraisal so
made, or upon making a tender thereof when the same shall
be refused, shall be entitled to enter upon the lands described
in the appraisal, and have and hold the same for the use and
benefit of such irrigation district forever.

When title to
vest in the
company.

§ 2422. s 20. If on any parcel of the lands so described
there shall be no person then living, authorized to receive
payment for the damages assessed for such parcel, and such
damages shall not have been lawfully demanded within ten
days after the filing of such appraisal, the board of trustees
may enter thereon without payment or tender of such dam-
ages, but subject to such payment whenever the same shall be
thereafter lawfully required.

When trustees
may enter on
lands without
payment.

§ 2423. s 21. Any person, who, in violation of any
right of any other person, or of said corporation, wilfully
turns or uses the water, or any portion thereof, of said canal,
ditch, or reservoir, except at a time or times when the use of
such water has been duly distributed to such person, or wil-
fully uses any greater quantity of such water than has been
duly distributed to him, or in any way changes the flow of
water when lawfully distributed for irrigation or other useful
purposes, except when duly authorized to make such change,
or wilfully or maliciously breaks or injures any dam, canal,
watergate, ditch or other means of diverting or conveying
water for irrigation or other useful purpose, is guilty of a
misdemeanor.

Penalty for
injuring
property of.
March 11, 1886.

§ 2424. s 22. All companies or districts organized
under the provisions of this act shall be liable for any damage
which may occur by the breakage of any canal or ditch.
When any land in an irrigation district is benefited or damaged
by the company's canals or ditches, from soakage or other
incidental cause, and the owner of said land and the company
cannot agree as to the amount of the benefit or damage, the
matter in dispute, as well as the question of damage through
breakage, may be referred and decided as provided in the
preceding section of this act. No irrigation company organ-

What damages
company
liable for.
March 13, 1886.

Must not use
waters when
another may
have acquired
a prior right.

ized under the laws of this Territory shall be entitled to divert the waters of any stream to the injury of any irrigation company or person holding a prior right to the use of said waters, and all cases of dispute arising from such unlawful division, may also be referred and decided as provided in section 18 of this act.

Right reserved
to Legislative
Assembly.

§ 2425. s 23. Nothing in this act shall be so construed as to interfere with the right of the Legislative Assembly to repeal, alter or amend the same at pleasure.

Persons who
have con-
structed
canals, etc.,
before the
passage of this
act may
organize under
it.

§ 2426. s 24. That persons who have constructed canals, ditches, or dams, and taken out water for irrigation purposes before the passage of this act to which this act is amendatory, are hereby authorized to organize under the provisions of said act, and to enjoy all the rights, powers and privileges guaranteed therein: *Provided*, They shall proceed in the same manner as is provided for the organization of new companies.

Construction.

§ 2427. s 25. Nothing in this act shall be so construed as to prevent any association of persons incorporating under the laws of this Territory relating to private corporations for general purposes.

CHAPTER IV.

TELEPHONE COMPANIES.

AN ACT TO PROVIDE FOR THE ORGANIZATION AND REGULATION OF
TELEPHONE COMPANIES.

SECTION.	SECTION.
2428 Who may incorporate.	2433 Continued
2429 What certificate must specify.	commissioners; application
2430 Privileges when and how se- must be made within six	months.
cured.	2434 Power of sale.
2431 Privileges and franchises de- 2435 Employees exempt from juries.	
fined.	2436 What sections made part of this
2432 Right of way.	act.
2433 Damages how ascertained and 2437 Construction.	
collected; compensation of	

§ 2428. s 1. That any number of persons, not less than March 13, 1884. three, two-thirds of whom must be residents of this Territory, Who may in- may associate and form a company for the purpose of con- corporate. structing, owning, holding and working a line or lines of telephone in this Territory, upon the terms and conditions, and subject to the liabilities prescribed in this act.

§ 2429. s 2. Such persons under their hands shall make What certi- a certificate which shall specify: cate must specify.

1. The corporate name of the company.
2. The general route of the principal line or lines of telephone, designating the principal points to be connected thereby.
3. The amount of the capital stock of the company and the number of shares into which the same shall be divided.
4. The names and places of residence of the principal shareholders, and the number of shares subscribed for by each.

5. The period of the existence of said company not to exceed fifty years. Which certificate shall be duly signed and acknowledged, and filed in the office of the secretary of the Territory.

§ 2430. s 3. Upon complying with the provisions of Privileges, when and how secured. the preceding section, such company shall become a body corporate by the name designated in said certificate, and shall be entitled to all the rights and privileges, and subject to

liabilities common to corporations in this Territory, and a certified copy of said certificate may be used as evidence in all courts and places.

Privileges and franchises defined.

§ 2431. s 4. Such company shall have power to purchase, take, receive, hold, use and vend to others to be used any patent or patents for telephoning; and any and all rights thereunder; to purchase, take, receive, hold and maintain any and all rights, privileges and franchises relating to the business of telephoning; to make, receive by assignment, or ratify by contract or agreement for the building, maintaining, controlling or working of any telephone line or lines; to construct, purchase, lease, take, or receive, hold, control and work any telephone line or lines so purchased by them in the Territory of Utah; and to purchase, take, lease, hold, own, use and occupy any real or personal estate, rights, property, telephone lines, grants, franchises and privileges that may be proper or convenient for the complete transaction of its business or for effectually and conveniently carrying out the objects and purposes of said company. It shall also have power to appoint such directors, officers, and agents, and to make such rules, regulations and by-laws as may be necessary or proper in the transaction of its business, and not inconsistent with the laws of this Territory or of the United States.

Right of way.

§ 2432. s 5. Such company is authorized to construct telephone lines along and upon any road or highway, or across any of the waters, or over any lands within the limits of this Territory by the erection of the necessary fixtures, including poles, posts, piers, or abutments, and the appropriation of any standing trees, except fruit and ornamental trees, and trees within enclosures for sustaining the wires of said telephone lines: *Provided*, The same shall not be so constructed as to incommode the public use of said road or highway or injuriously interrupt the navigation of said waters; but shall be constructed under such rules and regulations as the county courts of the several counties through which said telephone line or lines shall pass may prescribe.

Damages, how ascertained and collected.

§ 2433. s 6. If any person over whose lands said lines shall pass, upon which poles, posts, piers, or abutments shall be placed, or standing trees appropriated, shall consider himself aggrieved or damaged thereby, it shall be the duty of the district court of the district within which such lands are, on the application of such person, and on notice of such applica-

tion being served on the president, secretary, agent or attorney of such company, to appoint three discreet and disinterested persons as commissioners, who shall severally take an oath before any person authorized to administer oaths, that they will faithfully and impartially perform the duties required of them by this act, and it shall be the duty of said commissioners, or a majority of them, to make a just and equitable appraisal of all the loss or damage sustained by said applicant by reason of said lines, poles, posts, piers, or abutments, or appropriation of standing trees; duplicates of said appraisements shall be reduced to writing and signed by said commissioners or a majority of them, one copy shall be delivered to the applicant, one to the president, secretary, agent or attorney of said company or corporation, and the original shall be filed in the office of the clerk of the district court of said district: and in case any damage shall be adjudged to said applicant, the company or corporation shall pay the amount thereof, with the costs of said appraisal; said costs to be set forth and liquidated with the damages appraised, and said commissioners shall receive for their service such compensation as the district judge may award, to be paid in like manner as the costs and damages appraised; *Provided, however,* That in no case shall any person be entitled to any damage, when the application for the appointment of commissioners to appraise the same is not made to the district court within six months after the erection of said telephone lines across the lands of such persons.

Compensation
of commis-
sioners

Application
must be made
within six
months

§ 2434. s 7. Any telephone company may at any time with the consent of the persons holding two-thirds of the issued stock of said company, sell, lease, assign, transfer and convey any rights, privileges, franchises and property of said company.

Power of sale.

§ 2435. s 8. All operators, clerks and persons in the employ of any telephone company, while employed in the offices of said company or along the route of its telephone lines shall be exempt from serving on juries.

Employees
exempt from
juries.

§ 2436. s 9. Sections 2204, 2205, 2206 and 2207 of the Compiled Laws of Utah, in so far as they are applicable to telephone companies, are hereby made a part of this act.

What sections
made part of
this act.

§ 2437. s 10. This act shall not be construed to limit or impair any rights of any telephone company already in operation in this Territory.

Construction.

[Approved, March 13, 1884.]

CHAPTER V.

CHURCH INCORPORATION.

AN ORDINANCE INCORPORATING THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS.

Approved, February 8, 1851.

SECTION.

SECTION.

- 2438 Body corporate; name and style; seal. 2440 May make rules, etc.
2441 Registry.
2439 Powers of trustee in trust and 2442 Vacancies.
assistants; bonds; term of office; 2443 Restriction.
duty of clerk of conference

Body corpor-
ate.

§ 2438. ⁽⁵⁵⁰⁾ Be it ordained, etc.: That all that portion of the inhabitants of said State, which now are, or hereafter may become residents therein, and which are known and distinguished as "The Church of Jesus Christ of Latter-day Saints," are hereby incorporated, constituted, made and declared a body corporate, with perpetual succession, under the original name and style of "The Church of Jesus Christ of Latter-day Saints," as now organized, with full power and authority to sue and be sued: defend and be defended, in all courts of law or equity in this State: to establish, order and regulate worship; and hold and occupy real and personal estate, and have and use a seal, which they may alter at pleasure.

Name and
style.

Seal.

Powers of
trustee in
trust and as-
sistants.

§ 2439. ⁽⁵⁵¹⁾ And be it further ordained: That said body or church as a religious society, may, at a general or special conference elect one "trustee in trust," and not to exceed twelve assistant trustees, to receive, hold, buy, sell, manage, use and control the real and personal property of said church, which said property shall be free from taxation; which trustee and assistant trustees, when elected or appointed, shall give bonds with approved security, in whatever sum the said conference may deem sufficient, for the faithful performance of their several duties; which said bonds, when approved, shall be filed in the general church recorder's office,

Bonds.

at the seat of general church business, when said bonds are approved by said conference; and said trustee and assistant trustees shall continue in office during the pleasure of said church: and there shall also be made, by the clerk of the conference of said church, a certificate of such election or appointment of said trustee and assistant trustees, which shall be recorded in the general church recorder's office, at the seat of general church business; and when said bonds are filed, and said certificates recorded, said trustee or assistant trustees may receive property, real or personal, by gift, donation, bequest, or in any manner, not incompatible with the principles of righteousness, or the rules of justice: inasmuch as the same shall be used, managed, or disposed of for the benefit, improvement, erection of houses for public worship and instruction, and the wellbeing of said church.

Term of office.

Duty of clerk of conference.

§ 2440. ⁽⁵⁰²⁾ And be it further ordained: That, as said church holds the constitutional and original right, in common with all civil and religious communities, "to worship God according to the dictates of conscience;" to reverence communion agreeably to the principles of truth, and to solemnize marriage compatible with the revelations of Jesus Christ; for the security and full enjoyment of all blessings and privileges, embodied in the religion of Jesus Christ free to all; it is also declared, that said church does, and shall possess and enjoy continually, the power and authority, in and of itself, to originate, make, pass, and establish rules, regulations, ordinances, laws, customs, and criterions, for the good order, safety, government, conveniences, comfort, and control of said church, and for the punishment or forgiveness of all offences, relative to fellowship, according to church covenants; that the pursuit of bliss, and the enjoyment of life, in every capacity of public association and domestic happiness, temporal expansion, or spiritual increase upon the earth, may not legally be questioned: *Provided*, however, that each and every act, or practice so established, or adopted for law, or custom, shall relate to solemnities, sacraments, ceremonies, consecrations, endowments, tithings, marriages, fellowship, or the religious duties of man to his Maker; inasmuch as the doctrines, principles, practices, or performances, support virtue, and increase morality, and are not inconsistent with, or repugnant to the Constitution of the

May make rules, etc

United States, or of this State, and are founded in the revelations of the Lord.

Registry.

§ 2441. ⁽¹⁸⁸⁴⁾ And be it further ordained: That said church shall keep, at every full organized branch or stake, a registry of marriages, births, and deaths; free for the inspection of all members, and for their benefit.

Vacancies.

§ 2442. ⁽¹⁸⁸⁴⁾ And be it further ordained: That the presidency of said church shall fill all vacancies of the assistant trustees, necessary to be filled, until superseded by the conference of said church.

Restriction.

§ 2443. ⁽¹⁸⁸⁴⁾ Be it further ordained: That no assistant trustee or trustees shall transact business in relation to buying, selling, or otherwise disposing of church property; without the consent or approval of the trustee in trust of said church.

CHAPTER VI.

INCORPORATING PERPETUAL EMIGRATING FUND COMPANY.

AN ACT AMENDING, CONFIRMING AND LEGALIZING AN "ORDINANCE INCORPORATING THE PERPETUAL EMIGRATING FUND COMPANY."

Approved, Jan. 12, 1856.

SECTION.

2444 Act amended; confirmed; general conference to elect, etc.
2445 Body corporate; title.
2446 Powers.
2447 Majority, etc., form a quorum; powers.
2448 Bonds.
2449 Same.
2450 Settlement annually; officers, etc., to make returns.
2451 Duties of treasurer.
2452 Power to appoint; duty of officers, etc.

SECTION.

2453 Proceeds, how applied.
2454 Term of office.
2455 No officer, etc., to retain funds, may receive remuneration.
2456 Responsibility of persons aided.
2457 Probate judge to take charge of certain property.
2458 Responsibility of individuals.
2459 Property to go to perpetual emigrating fund.
2460 Penalty for non-compliance.

Act amended;
confirmed.

§ 2444. ⁽¹⁸⁸⁴⁾ Be it enacted, etc.: That the "Ordinance incorporating the Perpetual Emigrating Fund company," passed

by the provisional government of the State of Deseret, approved September 14, 1850, is hereby amended, confirmed and legalized as follows:

Be it ordained by the General Assembly of the State of Deseret: That a general conference of the Church of Jesus Christ of Latter-day Saints, or a special conference of said church, to be called at such time and place as the first presidency of said church shall appoint, is hereby authorized to elect, by a majority, a company of not less than thirteen men, one of whom shall be designated as their president, and the others as assistants.

§ 2445. ⁽⁵⁵⁷⁾ This company is hereby made and constituted a body corporate, under the name and style of "The Perpetual Emigrating Fund Company;" and shall have perpetual succession, and may have and use a common seal which they may alter at pleasure.

§ 2446. ⁽⁵⁵⁸⁾ Said company, under the name and style aforesaid, shall have power to sue and be sued, plead and be impleaded, defend and be defended in all courts of law or equity, and in all actions whosoever; to purchase, receive and hold, either by donation, or deposit, or otherwise, money and every kind of property real and personal; to emit bills of credit and exchange; to sell, lease, convey or dispose of property real and personal; and, finally, to do and perform any and all such acts as shall be necessary and proper for the interest, protection, convenience or benefit of said company.

§ 2447. ⁽⁵⁵⁹⁾ A majority or such members of said company as may at any time be in the immediate neighborhood of their president, shall form a quorum to do business, and shall elect a secretary and treasurer, and shall have power to select and appoint all other officers and agents necessary to transact the business of said company.

§ 2448. ⁽⁵⁶⁰⁾ The president and assistants shall individually give bond and security in a sum not less than ten thousand dollars, to be approved by the first president of said church, and filed in the general church recorder's office.

§ 2449. ⁽⁵⁶¹⁾ The secretary and treasurer, and all other officers or agents appointed by the company, shall give bonds and security, to be approved by the president of the company, and filed in the company secretary's office.

§ 2450. ⁽⁵⁶²⁾ There shall be a general settlement of all business transactions of the company, so far as returns re-

received from abroad will permit, as often as once in each year: and it shall be the duty of all the officers and agents to make out correct returns of all their transactions, and deliver or transmit them to the secretary of said company on or before the first day of December in each year: and, as soon as practicable thereafter, it shall be the duty of the president of the company to produce or exhibit a manifest thereof, and file it in the secretary's office and file a copy of said manifest in the general church recorder's office.

Officers, etc.,
to make
returns.

Duties of
treasurer.

§ 2451. — It shall be the duty of the treasurer to keep an accurate account of all money or property received and disbursed by him, and make returns as hereinbefore directed.

Powers to ap-
point; duty of
officers, etc.

§ 2452. — The company shall have the power of appointing and removing their officers and agents at pleasure: and it shall be the duty of said persons when removed to pay and pass into the hands of their respective successors, or of the company, all moneys, property, books, papers and accounts, of every name and nature, belonging or in any way pertaining to the business of said company.

Proceeds how
applied.

§ 2453. ⁽⁵⁶⁵⁾ The entire proceeds of the business of this company shall inure to the perpetual emigrating fund for the poor, whether arising from donations, insurance, deposits, exchange, increased value of property, or in any other way or manner whatsoever: and the general business of the company shall be devoted, under the direction and supervision of the first presidency of said church, to promote, facilitate and accomplish the emigration of the poor.

Term of office.

§ 2454. ⁽⁵⁶⁶⁾ The members of this company shall hold their offices at the pleasure of the conferences hereinbefore mentioned: but the first presidency of said church shall have power to fill all vacancies that may occur by death, removal, or otherwise: and all persons so appointed shall qualify and serve as hereinbefore directed, and hold their offices until superseded by an election.

No officer, etc.,
to retain
funds; may
receive remun-
eration.

§ 2455. ⁽⁵⁶⁷⁾ No officer, agent or member of the company shall be permitted to retain in his hands any portion of the funds of the company as compensation, but may receive such remuneration as shall be awarded upon settlement with the board of president and assistants.

Responsibility
of persons
aided.

§ 2456. ⁽⁵⁶⁸⁾ All persons receiving assistance from the Perpetual Emigrating Fund Company shall be held responsible therefor until paid.

AN ACT PROVIDING FOR THE MANAGEMENT OF CERTAIN PROPERTY.

Approved, January 20, 1854.

§ 2457. ⁽⁵⁶⁹⁾ Be it enacted, etc.: That the probate judge in each county is empowered and required to take possession of all property left by any deceased or abscondent person, when there is no legal claimant known, or sufficiently near to see to it in season; and shall forthwith appraise and make two lists of said property, and keep one on file, and furnish one to the treasurer of the perpetual emigrating fund.

Probate judge
to take prop-
erty to be
distributed
among
persons

§ 2458. ⁽⁵⁷⁰⁾ It is hereby made the duty of every person having such property in his possession, or knowing it to be in the possession of any other person, to report the property forthwith, and the name of the person in possession thereof, to the probate judge of the county where said possessor is at the time; and said judge shall take possession of such property as soon as practicable, and proceed therewith as required above.

Responsibility
of individuals

§ 2459. ⁽⁵⁷¹⁾ At the earliest practicable date, the probate judge shall place said property, or the avails thereof, in the possession of said fund, the value thereof to remain there until proven away by a legal claimant, when said judge shall give an order therefor on the treasurer of the fund.

Property to be
put into per-
petual emi-
grating fund.

§ 2460. ⁽⁵⁷²⁾ A failure to comply with the requisitions of this act, may be punished by costs, damages, and fine, adjudged by any court having jurisdiction.

Penalty for
non compli-
ance.

CHAPTER VII.

LIFE INSURANCE CORPORATIONS.

AN ACT RELATING TO LIFE INSURANCE COMPANIES.

SECTION.	SECTION.
2461 Unlawful to transact life insurance business except under this act.	2465 Continued.
2462 Corporations may be formed for the transaction of life insurance business.	2466 No agent to transact business until his company has obtained authority from the secretary; authority given upon what showing; parts of this section do not apply to mutual companies.
2463 Mutual life insurance company how incorporated.	2467 Statement to be made and published annually.
2464 Insurance companies may invest funds, how.	2468 Fees of the secretary of the Territory.
2465 Auditor of public accounts must examine securities and investments before company transact	

Unlawful to transact life insurance business except under this act.

§ 2461. s 1. It shall be unlawful to transact the business of life insurance in this Territory except under the provisions of this act.

Corporations may be formed for transaction of life insurance business.

§ 2462. s 2. It shall be lawful for any number of persons, not less than five, to associate themselves together for the establishment of a life insurance company in this Territory, and they shall be deemed a body corporate, authorized under the laws of the Territory to transact life insurance business, on complying with the provisions of Chapter I. of Chapter XLV., of the laws of this Territory, relating to private corporations, approved March 13th, 1884; *Provided*, That it shall not be lawful for any such company, except fraternal associations organized upon the assessment plan, to transact a life insurance business in this Territory, unless it shall have a paid-up capital of not less than one hundred thousand dollars, and shall have complied with the provisions of this act, unless herein otherwise provided.

Mutual life insurance company, how incorporated.

§ 2463. s 3. It shall be lawful for any number of persons, not less than fifty, at least two-thirds of whom shall be residents of this Territory, to associate themselves together for the establishment of a mutual life insurance

company in this Territory; and they shall be deemed a body corporate, authorized under the laws of the Territory to transact a mutual life insurance business, on complying with the provisions of this act, and of Chapter I. of Chapter XLV., of the laws of this Territory relating to private corporations, approved March 13th, 1884; as far as the provisions of this act and of said chapter are, or may be applicable: *Provided*, That at least fifty persons, two-thirds of whom shall be residents of this Territory, shall first have paid to the proper official of said company, twenty-five (25) per cent. of the annual premium of one-quarter of a million dollars of life insurance policies in the proposed company, together with their respective notes for the remaining seventy-five (75) per cent. of said annual premiums, which said sums shall amount to not less than ten thousand dollars, the fact of which payments must appear to the Territorial auditor, who, upon satisfactory evidence that the provisions of this section relating to said payments have been complied with, shall issue a certificate of approval which shall be filed with the secretary of the Territory.

§ 2464. s 4. It shall be lawful for any life insurance company, incorporated under the laws of this Territory, to invest its capital and funds accumulated in the course of its business, or any part thereof, in bonds of the United States, or this Territory, in real estate within the Territory; in first mortgages on real estate within the Territory; in bonds of any school district or incorporated city of the Territory, authorized by the Legislature to be issued, in stocks or bonds of any solvent dividend-paying institutions, other than mining corporations, incorporated under the laws of the Territory; to change and re-invest the same as occasion may, from time to time, require; and to lend the same, or any part thereof on the security of such above named property; *Provided always*, That the current market value of such property shall be, at the time of the investment, at least fifty per cent. more than the sum loaned thereon.

§ 2465. s 5. It shall be the duty of the auditor of public accounts to examine the securities and investments of every life insurance company organized under the laws of this Territory, and if he finds the provisions of this act complied with, he shall approve the same and must thereupon issue to each company, so incorporating, a certificate approv-

Insurance companies may invest funds, how.

Auditor of public accounts must examine securities and investments.

No company to
commence
business until
securities are
approved.

Auditor's fees.

This section
not to apply to
mutual life in-
surance com-
panies.

No agent shall
transact busi-
ness until in-
surance com-
pany has ob-
tained author-
ity from
secretary
authority
given upon
what showing.

ing its securities, which certificate shall be filed with the secretary of the Territory. No life insurance company shall have authority to commence business, until its securities shall have been approved by the auditor and the certificate of approval is filed in the secretary's office. The auditor shall be entitled to receive and collect from each company for each day or fraction thereof, occupied in examining said securities, the sum of ten dollars; *Provided*, That this section shall not apply to any mutual life insurance company organized under the provisions of section 3 of this act.

§ 2466. s 6. It shall be unlawful for any agent of any life insurance company to transact the business of life insurance within this Territory, unless the insurance company shall have first obtained a certificate of authority from the secretary of the Territory, which certificate shall be issued to said agent upon his filing with said secretary, a statement, sworn to by an officer or manager of said company, showing:

1. The name and locality of the company.
2. The amount of capital stock.
3. The capital paid up.
4. The amount of its assets and liabilities.
5. The net surplus over all liabilities.
6. The name of its attorney, or agent for the Territory; upon whom service of process in any civil action against said company, may be made.
7. The receipts and expenditures during the year.

And upon filing with said secretary, a duly authenticated abstract of the laws of the State, Territory, or foreign government under which said company was organized; *Provided*, That mutual and fraternal associations or companies organized without capital stock, upon the assessment plan solely, shall not be subject to the provisions of the requirements in subdivisions 2, 3, 4, and 5, of this section.

Certain parts
of this section
do not apply to
assessment
companies.

Statement to
be made
annually and
published.

§ 2467. s 7. The statement referred to in section 6, shall be renewed annually, in the month of June of each year, and shall be published by each company, on, or before the 30th day of June of each year, at least four times in some newspaper, published in this Territory, and having general circulation therein.

Fees of secre-
tary of
Territory.

§ 2468. s 8. The secretary of the Territory shall be entitled to the following fees herein: for filing statements mentioned in section 6, five dollars; for issuing certificate of

authority, two dollars: for issuing each subsequent certificate of authority to other agents of the same company, one dollar.

§ 2469. s 9. Any person violating any of the provisions of this act shall be guilty of a misdemeanor.

CHAPTER VIII.

PARTNERSHIPS.

SECTION.	SECTION.
2470 When private property liable for partnership debts.	2482 Proof of publication.
2471 Assignment by partner to secure firm indebtedness valid.	2483 Renewal of such partnership, how done.
2472 Construction of preceding sections.	2484 Alteration; dissolution.
2473 Limited partnerships subject to conditions.	2485 Business, how conducted.
2474 May consist of general and special partners.	2486 How actions against to be brought.
2475 General partners alone to conduct business.	2487 Capital stock of special partner not to be withdrawn, etc.
2476-2477 How limited partnership formed.	2488 When special partner to restore money received.
2478 Certificate must be recorded.	2489 Special partner not to transact business.
2479 Affidavit to be filed.	2490 Right of partners to account between themselves.
2480 Such partnership not formed until such certificate recorded and affidavit filed.	2491 Liability of special partners.
2481 Terms of partnership must be published.	2492 Not to claim as creditors.
	2493 Dissolution, when and how accomplished.

§ 2470. ⁽³⁷⁷⁾ That the private property of persons engaged in co-partnerships shall be held liable for the debts of the firm, when the partnership property shall prove insufficient to pay them. Jan. 14, 1857.
When private property liable for partnership debts.

§ 2471. ⁽³⁷⁸⁾ The assignment of any partner in trade, made to secure or satisfy a creditor of such firm, shall be deemed valid in law. What assignment valid.

§ 2472. ⁽³⁷⁹⁾ This act shall not be so construed as to authorize the assignment of any of the effects of such co-partnership to satisfy the individual claim of any of the parties, or other than such debts as are incurred for the effects or proceeds thereof thus assigned. Construction of former section.

Limited
partnerships
may be
formed.
March 12, 1884.

§ 2473. s 1. That limited partnerships for the transaction of any mining, mercantile, mechanical or manufacturing business within this Territory, may be formed by two or more persons upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed; but the provisions of this act shall not be construed to authorize any such partnership for the purpose of banking or effecting insurance.

May consist
of general and
special
partners.

§ 2474. s 2. Such partnerships may consist of one or more persons who shall be called general partners and shall be jointly and severally responsible as general partners, now are by law, and of one or more persons who shall contribute in actual cash payments, or in real or personal property, a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the co-partnership beyond the fund so contributed by him or them to the capital stock.

Who may
transact
business.

§ 2475. s 3. The general partners only shall be authorized to transact business and sign for the co-partnership and to bind the same.

Certificate to
be signed;
what it must
contain.

§ 2476. s 4. The persons desiring to engage in the formation of such partnership, shall make and severally sign a certificate, which shall contain:

1. The name of the firm under which such partnership is to be conducted.

2. The general nature of the business intended to be transacted.

March 12, 1884

3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence.

4. The amount of capital in money or in real and personal property which each special partner shall have contributed to the common stock.

5. The period at which the partnership is to commence and the period at which it shall terminate.

Certificate;
how acknow-
ledged.

§ 2477. s 5. The certificate shall be acknowledged by the several persons signing the same before a notary public or other officer authorized by law to take acknowledgment or proof of the execution of conveyances of land, and such acknowledgment and proof shall be made and certified in the same manner as the acknowledgment or proof of conveyances of land may be made or certified.

§ 2478. s 6. The certificate so acknowledged and certified shall be filed in the office of the county recorder of the county in which the principal place of business of the partnership shall be situated, and shall be recorded by such county recorder in a book kept for that purpose, and in case any such partnership shall have a place of business in more than one county in the Territory, then a copy of such certificate, so acknowledged and certified by the county recorder of the county where the original was filed, shall in like manner be filed and recorded in each county in which such partnership shall have a place of business, in the office of the county recorder of said county.

§ 2479. s 7. At the time of filing the original certificate with the evidence of the acknowledgment thereof, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the sums specified in the certificate, or value thereof in real and personal property, have been contributed by each of the special partners to the common stock, and actually and in good faith paid into the general fund.

§ 2480. s 8. No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit has been filed as before directed, and if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners.

§ 2481. s 9. The partners shall immediately publish the terms of the partnership, when recorded as above provided, for at least four consecutive weeks, in a newspaper to be designated by the county recorder of the county in which the record shall be made, and if no newspaper is published in the county, then the same shall be published in a newspaper published within the judicial district in which their business shall be conducted, and if such publication be not made the partnership shall be deemed general.

§ 2482. s 10. Affidavits of the publication of such notice by the printer, publisher or foreman of the newspaper in which the same shall be published, shall be filed with the county recorder directing the same and shall be evidence of the facts therein contained.

Certificate
must be
recorded

Affidavit must
be filed with
certificate

Partnership
not formed
until
certificate is
recorded and
affidavit filed.

Terms of
partnership
must
be published
when and how.

March 12, 1884.
Affidavits of
printer, etc., to
be evidence of
publication.

Renewal of.

§ 2483. s 11. Every renewal or continuance of such partnership beyond the time originally fixed for its duration, shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice be given in the manner herein required for its original formation, and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership.

Alteration and
charges.
dissolution of.

§ 2484. s 12. Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership, and every such partnership which shall in any manner be carried on after any such alteration shall have been made, shall be deemed a general partnership, unless renewed as special partnership according to the provisions of this act.

How
conducted.

§ 2485. s 13. The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted, and if the name of any special partner shall be so used in such firm, he shall be deemed and held liable as a general partner.

Actions.

§ 2486. s 14. Actions in relation to the business of the partnership may be brought and conducted by and against the general partners in the same manner as if there were no special partners.

Capital stock
contributed.

§ 2487. s 15. No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him from the firm, or paid or transferred to him in the shape of dividends, profits, or otherwise, at any time during the continuance of such partnership, but any partner may annually receive such rate of interest on the sum so contributed by him, as may be agreed upon in the articles of co-partnership not exceeding twelve per centum per annum, if the payment of such interest shall not reduce the original amount of such capital, and after the payment of such interest, if any profits shall remain to be divided, he may also receive his portion of such profits.

When special
partner to re-
store money
received.

§ 2488. s 16. If it shall appear by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of the capital with interest.

§ 2489. s 17. A special partner may from time to time examine into the condition and progress of the partnership concerns, and may advise as to their management, but shall not engage in or transact any ordinary business of the partnership. If he shall interfere contrary to this provision, he shall be deemed in law a general partner, and accountable as such. Special partners not to transact business

§ 2490. s 18. The general partners shall be liable to account to each other, and to the special partners, for their management of the business, as other partners are now liable by law. General and special partners to account.

§ 2491. s 19. Every special partner who shall violate any provision of section 17, or who shall concur in or assist to any such violation by the partnership, or by any individual partner, shall be liable as a general partner. Liability of special partners

§ 2492. s 20. In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as a creditor, until the claims of all the creditors of the partnership shall be satisfied. Special partners not to claim as creditors

§ 2493. s 21. No dissolution, unless by the consent of creditors of such partnership, by the acts of the parties, shall take place previous to the time specified in the certificate of its formation or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the office of the recorder of the county in which the original certificate was recorded, and published once in each week, for four consecutive weeks in a newspaper printed in each of the counties, or if none are printed in the county, then in the judicial district where the partnership may have places of business. Dissolution of when.

CHAPTER IX.

BANKING CORPORATIONS.

SECTION.	SECTION.
2494 Who may organize.	2507 Officers; term of; holding over: must hold five shares stock.
2495 To organize, the amount of stock to be subscribed; the percentage to be paid; notice of meeting to adopt articles.	2508 Effect of holding less.
2496 Articles, what to contain.	2509 Certified copy of articles evidence.
2497 Each stockholder to subscribe, how; affidavit attached, what to contain.	2510 Vacancy, how filled.
2498 Filing of articles; who to certify to the incorporation; corporate powers.	2511 Directors, when elections for not held at regular times; how held afterwards.
2499 Power to hold and convey real estate; for what purposes.	2512 Elections, how time for designated.
2500 Minimum of capital stock.	2513 Individual responsibility of share holders.
2501 How to be divided; personal property; how transferable.	2514 Quarterly statement of resources and liabilities to be made and published; list of stockholders open to inspection of bank customers.
2502 Rights and liabilities of shareholders.	2515 Loans to officers; limitations; security; not to be security for loans; penalty.
2503 Twenty-five per cent. of capital to be paid before commencing business; how remainder to be paid and collected; sales of delinquent stock, how advertised and conducted.	2516 Dividends only to be declared of profits actually earned.
2504 Increase of capital stock, how made; limitations and restrictions.	2517 Married women and minors, capacity of to draw deposits and dividends.
2505 Decrease of capital stock; limitation.	2518 Secretary of Territory bank examiner; his duties and compensation.
2506 Vote allowed for each share at stockholders' meeting.	2519 Reservation of right to amend or repeal act.

March 8, 1888.
Banking or
savings
institution;
who may
organize.

§ 2494. s 1. Be it enacted, etc.: That any number of persons not less than six, two-thirds of whom shall be residents of this Territory, being subscribers to the stock of any contemplated bank or savings institution, may be formed into a corporation for the purpose of owning and maintaining such bank or savings institution.

To organize,
amount of
stock to be
subscribed,
and
percentage
thereof to be
paid.

§ 2495. s 2. That, whenever stock to the amount of at least one hundred thousand dollars shall have been subscribed, and twenty-five per cent, in cash paid thereon, to the treasurer appointed by said subscribers from among their number, then such subscribers, either in person or by written proxy, after having received not less than four days notice from said

treasurer of a meeting for that purpose, may meet and adopt articles of association, and may elect from among their number not less than five directors; *Provided*, That in cities or towns having a population of more than ten thousand inhabitants and less than twenty thousand, corporations may be formed with a capital stock of at least fifty thousand dollars, and in cities or towns having a population of less than ten thousand inhabitants, corporations may be formed with a capital stock of at least twenty-five thousand dollars.

§ 2496. s 3. Said articles of association shall set forth: Notice of meeting to adopt articles of association. Articles, what to contain.

1. The fact, that the articles are entered into and the agreements subscribed, to enable such persons to avail themselves of the privileges of this law.

2. The amount of capital stock and the number of shares into which the same is to be divided.

3. The names and places of residence of the shareholders, and the number of shares held by each of them.

4. The number and kind of officers to manage the affairs of the company, and the names of those for the first year.

§ 2497. s 4. Each stockholder shall personally subscribe to such articles of association, his name, place of residence, and the number of shares of stock taken by him in such company; *Provided*, In case a person having duly paid the twenty-five per cent. required upon subscription, said articles may be signed by written proxy or power of attorney to that effect, and there shall be endorsed and attached to said articles so subscribed, an affidavit made by any three or more of the subscribers named therein, before a judge of some court of record or notary public, setting forth in substance the amount of stock which has been subscribed, and that twenty-five per cent. in cash has been paid thereon, as aforesaid, and that the subscribers to said articles are personally known to them, and that they believe such subscribers are able to and will pay the amount by them subscribed.

Each stockholder to subscribe articles; how.

Affidavit endorsed or attached to articles; what to contain.

§ 2498. s 5. The articles of association formed in pursuance of the foregoing sections, shall be filed in the office of the clerk of the probate court (or in the office of the clerk of the district court) (who shall issue under the seal of said court a certificate to the effect that the articles of association have been filed in his office, which certificate, together with a copy

Where article to be filed, certificate of filing.

Articles and certificate to be filed with secretary of Territory: his certificate of incorporation.

Corporate powers.

of the articles, must be filed in the office of the secretary of the Territory, who shall issue, under the great seal of the Territory, a certificate of incorporation, and thereupon the persons who have subscribed said articles, and all persons who may from time to time become stockholders in said company, shall be a body politic and corporate, by the name stated in its articles of association, and said corporation shall have power:

1. To adopt and use a corporate seal.

2. To have succession for a period of fifty years from its organization, unless it is sooner dissolved according to the provisions of its articles of association, or by acts of its shareholders, owning two-thirds of its stock, or unless its franchise becomes forfeited by some violation of law.

3. To make contracts.

4. To sue and be sued, complain and defend in any court of law and equity as fully as natural persons.

5. To elect by its stockholders, directors from time to time, and by its board of directors, to appoint a president, a vice-president, cashier and such other officers as shall be provided for in its articles of association, define their duties, require bonds of them, and fix the penalty thereof, dismiss such officers or any of them at pleasure: and appoint others to fill their places.

6. To prescribe by its board of directors, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its general business conducted, and the privileges granted to it by law, exercised and enjoyed.

7. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking by discounting or negotiating promissory notes, drafts, bills of exchange and other evidences of debt, by receiving deposits, by buying and selling exchange, coin and bullion, and by loaning on personal or real security.

Power to hold and convey real estate; for what purposes

§ 2499, s 6. Banking associations formed under this law shall also have power to hold and convey real estate for the following purposes, to-wit:

1. Such as shall be necessary for its accommodation in the transaction of its business.

2. Such as shall be mortgaged in good faith by way of security for debts duly contracted.

3. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

4. Such as it shall purchase at sales under judgments, decrees or mortgages held by the association, or shall purchase to secure debts due to it.

§ 2500. s 7. No association shall be organized under this law with a capital stock of less than twenty-five thousand dollars, and as is provided in section 2 of this act.

§ 2501. s 8. The capital stock of the association shall be divided into shares of not to exceed one hundred dollars each nor less than fifty dollars, and shall be deemed to be personal property, and shall be transferred on the books of the association in such manner as may be prescribed by the by-laws and articles of association.

§ 2502. s 9. Every person becoming a shareholder by such transfer shall in proportion to his share, succeed to all the rights and liabilities of the previous holder of said shares, and no change shall be made in the articles of association by which the rights, remedies or securities of existing creditors of the association shall be impaired.

§ 2503. s 10. At least twenty-five per cent. of the capital stock of every association formed under this law shall be paid in cash before it shall be authorized to commence business, and thereafter the remainder due thereon in instalments of not less than ten per cent. monthly until the full amount of the capital so subscribed shall have been paid: *Provided*, Whenever any shareholder or his assignee fails to pay any instalment of stock when the same is required as provided above, the directors of such association may sell so much of the stock of such delinquent shareholder as may be necessary at public auction after giving two weeks previous notice thereof in a newspaper published or of general circulation in the county where the association is located, or if no newspaper is published in the city or county, then in a newspaper published nearest thereto, to any person who will pay the highest price therefor, to be not less than the amount then due thereon with the expenses of advertising and sale, and the excess if any, shall be paid to the delinquent shareholder. If no person can be found who will buy such stock at the amount due thereon to such association, and the costs of

advertising the sale, then the amount previously paid shall be forfeited to the association and such stock shall be sold as the directors may order within six months from the day of said forfeiture, and if not sold, shall be deducted from the capital stock of the association.

Articles may provide for increase of capital stock; limitation; no increase valid until twenty-five per cent. paid

§ 2504. s 11. Any association formed under this law, may by its articles of association, provide for an increase of its capital from time to time as it may be deemed expedient, but in no case shall the capital stock of such association be increased to exceed one million dollars, and no increase shall be valid until at least twenty-five per centum thereof shall be paid in, and the balance shall be paid in the same manner as is provided in section 10 of this act.

Capital may be decreased; limitation.

§ 2505. s 12. Any association formed under this law may reduce its capital by vote of its shareholders owning two-thirds of its capital stock, to any sum not below the amount required, authorizing the formation of the corporation; *Provided*, The capital shall never be reduced so as to in any way impair the security of its existing creditors.

Vote allowed for each share of stock at any shareholders' meeting.

§ 2506. s 13. At any meeting of the shareholders each shareholder shall be entitled to one vote for each share of stock held by him. Shareholders may vote by proxy duly authorized in writing.

Officers, term of office, holding over, amount of stock officer must hold.

§ 2507. s 14. The officers named in the articles of association of any company formed as provided for herein shall hold office for a period of one year, and until their successors are duly elected and qualified in the manner provided by its articles of association, and every officer of the corporation must own in his own name at least five shares of the capital stock of the association of which he is an officer.

Effect of holding 1e s.

§ 2508. s 15. Any officer who ceases to be the owner of five shares of stock, or who becomes in any manner disqualified, shall thereby vacate his office.

Certified copy of articles evidence.

§ 2509. s 16. A certified copy of the certificate of incorporation under the hand and seal of the officer with whom the articles of associations are filed as aforesaid, shall in all courts be deemed *prima facie* evidence of the legal existence of such corporation.

Vacancies, how filled.

§ 2510. s 17. Any vacancy of the board shall be filled by appointment by the remaining directors, and any director so appointed shall hold his place until the next election.

§ 2511. s 18. If from any cause an election for directors is not made at the time appointed, the association shall not for that cause be dissolved; but an election may be held on any subsequent day, thirty days' notice thereof having been first given in some newspaper, published in the city, town or county in which the association is located, or if no newspaper is published in such city, town or county, such notice shall be published in the newspaper published nearest thereto.

When directors not elected at regular time; effect; how afterwards elected

§ 2512. s 19. If the articles of association fail to fix the day on which the election for directors shall be had, or if no election is held on the day fixed, the day for the election shall be designated by the board of directors in their by-laws or otherwise; or if the directors fail to fix a day, shareholders representing two-thirds of the capital stock may do so.

Election, time of, how designated.

§ 2513. s 20. The shareholders of every banking or savings association, organized under this law, shall be held individually responsible, equally and ratably, and not one for another for all contracts, debts and engagements of such association made or entered into to the extent of the amount of his stock therein at the par value thereof in addition to the amount invested in and due on such shares.

Individual responsibility of stockholders

§ 2514. s 21. Every banking association formed under this law shall make and publish a statement of its resources and liabilities at least every quarter in each year (at such times as the bank examiner hereinafter provided for shall call upon it for the same; *Provided*, That said examiner shall call for said statements upon a date at least five days previous to the date upon which said examiner shall issue said call) in some newspaper having a general circulation in the county where such bank is located, and a list of its stockholders shall be open to inspection by all persons doing business with the bank.

Quarterly statement of resources and liabilities to be made and published.

List of stockholders open to inspection of bank customers.

§ 2515. s 22. No officer of any bank or savings institution organized under this law, shall borrow money from such bank or savings institution to exceed the sum of ten thousand dollars, and no sum of money shall be loaned to any officer of said institution, unless he furnishes security in at least double the amount of the loan made, and no loan by any officer of said institution shall be made for a period of over three months, and the stock of the association shall not be taken as security for any loan; nor shall any officer of such banking association become an endorser or security for loans to

Loans to officers, limitations and security, officers not to be security for loans.

Penalty for violation of these provisions.

others. The office of any director or officer who acts in contravention to the provisions of this section, immediately thereupon becomes vacant; and any loan he shall have made in contravention of the provisions of this section shall be immediately due and payable, and the bank shall take immediate steps to collect the same.

Dividends may be declared, but only of profits earned.

§ 2516. s 23. The directors may, from time to time, make such dividends on their capital stock as they may deem prudent; *Provided*, They shall make no dividend on the capital stock, except profits actually earned and on hand.

Married women and minors may make and draw deposits and draw dividends.

§ 2517. s 24. Married women and minors may in their own right, make and draw deposits and draw dividends, and give valid receipts therefor.

Secretary of Territory, bank examiner; his duties as such, and compensation.

§ 2518. s 25. The secretary of Utah Territory, until otherwise provided, shall be ex-officio bank examiner. He shall, as often as once, and not to exceed twice a year, either in person or by agent duly appointed by him, examine every bank organized under this law, and he, or his agent in case he appoints one shall have power to make a thorough examination into all the affairs of the association, and in so doing, may examine any of the officers and agents thereof on oath, and shall make a full and detailed report in writing of the condition of the association which shall be filed in the office of said examiner, and which shall be open for the inspection of all persons doing business with the bank. Such examiner, or his agent shall receive for his services, the sum of ten dollars per day, and two dollars for every twenty-five miles he shall necessarily travel in the performance of his duty, which shall be paid by the association by him examined. No person shall be appointed to be such agent for said examiner to examine the affairs of any banking association of which he is a director, officer or stockholder.

Reservation of right to amend or repeal

§ 2519. s 26. This act shall take effect from and after the date of the passage and approval thereof; *Provided*, That the same may be altered, changed, amended or repealed at any time hereafter.

CHAPTER X.

CORPORATIONS TO PREVENT CRUELTY TO ANIMALS.

AN ACT TO ESTABLISH CORPORATIONS FOR THE PREVENTION OF CRUELTY TO ANIMALS.

SECTION.	SECTION.
2520 Corporation may be formed to prevent cruelty to animals; articles shall contain what.	2523 Powers of directors.
2521 Copy of articles to be filed where.	2524 Powers of corporation.
2522 Corporation must be managed by a board of directors to be elected how; president, secretary and treasurer how elected.	2525 Corporation must report to auditor of public accounts.
	2526 Objects of the corporation.
	2527 When act takes effect.

§ 2520. s 1. Any number of persons, not less than five, may become a body corporate for the purpose of preventing cruelty to animals and fowls. Such corporation shall be formed by the persons associated for that purpose, executing under their hands, and acknowledging before some person authorized to take acknowledgments of deeds, articles of association, which shall contain:

1. The proposed corporate name of the association.
2. The place where the principal office of the corporation shall be located.
3. The period for which the corporation shall continue.
4. The objects of the corporation.
5. The names of the persons associating, and their respective places of residence.
6. The number of directors and regular officers.
7. The terms and conditions of membership, both active and honorary.

§ 2521. s 2. A copy of such articles of association, so executed and acknowledged, verified by the affidavit of one of the persons who executed the original, shall be filed and recorded in the office of the clerk of the district court, or in the office of the clerk of the county court, and said clerk shall issue, under the seal of said court, a certificate to the effect that such articles of association have been filed and

recorded in his office, which certificate, together with a copy of the articles of association, certified by the district clerk or clerk of the county court, shall be filed in the office of the secretary of the Territory who shall issue, under the great seal of the Territory, a certificate of incorporation, and thereafter the persons so executing such articles, and those who may afterwards become associated with them, shall become and be a body politic and corporate, for the purposes in such articles mentioned.

Corporation must be managed by a board of directors to be elected, how.

§ 2522. s 3. The affairs of such corporation shall be managed by a board of directors, to be chosen in the first instance by the persons who shall have executed the articles of association, and thenceforth, annually by the members of the association. The president, secretary and treasurer of the association shall be chosen by the board of directors, and the president shall be ex-officio a member of the board.

President, secretary and treasurer, how elected.

Powers of directors.

§ 2523. s 4. The board of directors shall have power to make by-laws, prescribing the terms and conditions of membership of the association, and in respect to all other matters relating to the association and its business, not inconsistent with the provisions of this act. A majority of the members of the board shall constitute a quorum for the transaction of all business.

Powers of corporation.

§ 2524. s 5. Any corporation organized under this act shall have power to take, hold, and convey real and personal property, not exceeding ten thousand dollars in the aggregate.

Corporation shall report to auditor of public accounts.

§ 2525. s 6. Such corporation shall, whenever required by the auditor of public accounts, make and file with that officer, a report, giving a full statement of its affairs showing the amount of money and the property, its character, and value received by it, and from whom such money and property have been received, and also the disposition made thereof, together with an itemized statement of all money expended by it, and for what purpose.

Objects of the corporation.

§ 2526. s 7. The objects of such corporation shall be to prevent cruelty to animals and fowls by the enforcement of all laws of the Territory on such subjects, and all other lawful means, and shall exercise no other powers.

When act takes effect.

§ 2527. s 8. This act shall take effect upon its passage and approval.

PART FIFTH.

DOMESTIC RELATIONS.

CHAPTER I.

PROPERTY RIGHTS OF HUSBAND AND WIFE.

SECTION.

2528 Separate property.

2529 Either spouse may sue or be sued.

SECTION.

2530 Dower abolished.

§ 2528. ⁽¹⁰²⁰⁾ All property owned by either spouse before marriage, and that acquired afterwards by purchase, gift, bequest, devise or descent, with the rents, issues and profits thereof, is the separate property of that spouse by whom the same is so owned or acquired, and separate property owned or acquired as specified above, may be held, managed, controlled, transferred and in any manner disposed of by the spouse so owning or acquiring it, without any limitation or restriction by reason of marriage.

Separate
property
Feb. 16, 1872.
Feb. 18, 1880

§ 2529. ⁽¹⁰²¹⁾ Either spouse may sue or be sued, plead and be impleaded, or defend and be defended at law.

Either spouse
may sue and
be sued.

§ 2530. ⁽¹⁰²²⁾ No right of dower shall exist or be allowed in this Territory. (1)

Dower abol-
ished.

(1) See Edmunds-Tucker Law, ante Volume I, pp. 119, 120.

RELEASE OF DOWER.

SECTION.

2531 Dower right may be conveyed by wife joining in deed with her husband.

2532 A married woman may join in a power of attorney.

SECTION.

2533 Previous deeds so executed made effectual.

2534 When act takes effect.

Feb. 25, 1888.
Dower right may be conveyed by wife joining with husband in deed, witnessed as to her and acknowledged.

§ 2531. s 1. In any conveyance of, or incumbrance upon real property, by deed of the husband, the wife may join with him, or his attorney-in-fact, in such deed, and her so joining her husband in such deed shall transfer and convey any and all rights of dower she may have in the property conveyed, or incumbered in or by such deed, but to be valid the signature of the wife must be witnessed, and she must acknowledge the execution thereof before some officer authorized to take such acknowledgment, in the same manner as an unmarried woman.

A married woman may join in power of attorney.

§ 2532. s 2. A married woman may join in a power of attorney with her husband for the incumbrance, release or conveyance of lands, or of any interest therein; and said power of attorney shall be witnessed by at least one credible witness, acknowledged in the manner provided by law, and shall be entitled to record.

Previous deed so executed made effectual

§ 2533. s 3. That all instruments of writing which have been executed and acknowledged by married women before any officer authorized by the laws of this Territory to take acknowledgments to instruments in writing, affecting the title to real property in this Territory, since the second day of March, 1887, and which purport to have been so executed and acknowledged for the purpose of encumbering, releasing or conveying their rights of dower in the real property described in such instruments; and all such instruments wherein the wife has executed and acknowledged an encumbrance, release or conveyance with her husband, or his attorney-in-fact, and such instrument purports to convey all their interest in the property described in such instrument, without referring to her right of dower, shall be regarded and considered as a sufficient and proper encumbrance, release or conveyance, as the case may be, of the right of dower of such married woman in such property; and all such instruments are hereby declared valid and effectual in all respects, for such purpose.

§ 2534. s 4. This act shall take effect upon its approval by the Governor.

CHAPTER II.

GUARDIAN AND WARD.

SECTION.	SECTION.
2535 Guardians may be appointed.	2552 Joint guardianship, survival of powers in case one dies.
2536-2537 Definition of and of ward.	2553 Removal of, causes.
2538-2540 Kinds of guardians, general and special.	2554 Power of guardian appointed by parent; when superseded.
2541 How appointed in certain cases.	2555 When power of guardian appointed by court may be superseded.
2542 How in others.	2556 Ward may settle with.
2543 Parent must be guardian to take charge of property.	2557 When guardian entitled to discharge.
2544-2545 What court may appoint.	2558 How infants may appear in suits.
2546 Considerations to govern.	2559 Shares of stock of minors or insane persons, how represented
2547-2549 Power of guardian and his duty.	
2550 Relations of guardian and ward.	
2551 Court to exercise control.	

§ 2535. s 1. That guardians may be appointed by the courts in this Territory in the manner provided for in and pursuant to this act. Feb. 20, 1880.
Guardians may be appointed.

§ 2536. s 2. A guardian is a person appointed to take care of the person or property of another. Guardians.

§ 2537. s 3. The person over whom, or over whose property a guardian is appointed, is called his ward.

§ 2538. s 4. Guardians are either:

1. General; or,
2. Special.

§ 2539. s 5. A general guardian is the guardian of the person, or of all the property of the ward within this Territory, or of both. General guardians

§ 2540. s 6. Every other is a special guardian. Special guardians.

§ 2541. s 7. A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing; such appointment may be made by the father, with the written consent of the mother; or by either parent, if the other be dead or incapable of consent. When and how guardians may be appointed.

§ 2542. s 8. A guardian of the person or property, or both, of a person residing in this Territory, who is a minor, or of unsound mind, may be appointed in all cases, other than those named in the preceding section, by the probate court, as provided in Chapter II. of this act. Guardians in other cases.

A guardian must be appointed before assuming his duties.

§ 2543. s 9. No person, whether a parent or otherwise, shall have any power as a guardian of property, except by appointment as hereinafter provided.

Who may appoint.

§ 2544. s 10. A guardian of the property within this Territory, of a person not residing therein, who is a minor, or of unsound mind, may be appointed by the probate court.

Court making the appointment has jurisdiction.

§ 2545. s 11. In all cases, the court first making the appointment of a guardian shall have exclusive jurisdiction to control him.

Feb. 20, 1880.
Considerations governing the appointment of guardians.

§ 2546. s 12. In awarding the custody of a minor, or in appointing a general guardian, the court or officer shall be guided by the following considerations:

1. By what appears to be for the best interest of the child, in respect to its temporal and its mental and moral welfare; and if the child be of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question.

2. As between parents adversely claiming the custody or guardianship, neither parent shall be entitled to it as of right, but, other things being equal, if the child be of tender years, it should be given to the mother; if it be of an age to require education and preparation for labor or business, then to the father.

3. Of persons equally entitled to the custody in other respects, preference shall be given as follows:

1. To a parent.
2. To one who was indicated by the wishes of a deceased parent.
3. To one who already stands in the position of a trustee of a fund to be applied to the child's support.
4. To a relative.

Power of a guardian

§ 2547. s 13. A guardian appointed by a court, shall have power over the person and property of the ward, unless otherwise ordered.

Duty of the guardian

§ 2548. s 14. A guardian of the person shall be charged with the custody of the ward, and must look to his support, health and education. He may fix the residence of the ward at any place within the Territory, but not elsewhere, without permission of the court.

§ 2549. s 15. A guardian of the property must keep safely the property of his ward. He must not permit any

unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the probate court, but must, so far as it is in his power, maintain the same, with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the ward, at the close of his guardianship, in as good condition as he received it, natural wear and tear excepted.

Guardian to take proper care of property.

§ 2550. s 16. The relation of guardian and ward is confidential; and all property held by a guardian shall be held in trust for his ward.

The relation of guardian and ward.

§ 2551. s 17. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

Court to exercise control of guardian.

§ 2552. s 18. On the death of one of two or more joint guardians, the power shall continue to the survivor until a further appointment is made by the court.

Death of a joint guardian, continues power to the survivor.

§ 2553. s 19. A guardian may be removed by the probate court for any of the following causes:

Feb 20, 1880.
Causes for which guardians may be removed.

1. For abuse of his trust.
2. For continued failure to perform its duties.
3. For incapacity to perform its duties.
4. For gross immorality.
5. For having an interest adverse to the faithful performance of his duties.
6. For removal from the Territory.
7. In the case of a guardian of the property, for insolvency; or,
8. When it is no longer proper that the ward should be under guardianship.

§ 2554. s 20. The power of a guardian appointed by a parent shall be superseded:

Power of a guardian appointed by court, shall be superseded, when.

1. By his removal, as provided by section 19 of this chapter.

2. By the marriage of the ward; or,

3. By the ward's attaining majority.

§ 2555. s 21. The power of a guardian appointed by a court shall be superseded only:

Power of a guardian appointed by a parent, may be superseded when.

1. By order of the court; or,

2. If the appointment was made solely because of the ward's minority, by his attaining majority; or,

3. The guardianship over the person of the ward, by the marriage of the ward.

Ward may settle with guardian, when.

§ 2556. s 22. After a ward has come to his majority, he may settle accounts with his guardian, and give him a release, which shall be valid if obtained fairly and without undue influence.

When guardian is entitled to discharge.

§ 2557. s 23. A guardian appointed by a court shall not be entitled to his discharge until one year after the ward's majority.

Infants may appear at court, how.

§ 2558. 24. When an infant is a party to any suit, he must appear either by his general guardian, if he have one, or by a guardian appointed by a court as provided for in Chapter II., Title XVI., Compiled Laws of Utah. (1)

Shares of stock of a minor to be represented, how.

§ 2559. s 25. The shares of stock of an estate of a minor, or insane person, may be represented by his guardian, and of a deceased person by his executor or administrator.

MINORS.

SECTION.

- 2560 Period of minority.
- 2561 Contracts of minors.
- 2562 Cases in which minors cannot disaffirm.

SECTION.

- 2563 Contracts for personal services of minors.

Feb 6, 1892.
Period of minority.

§ 2560. (1035) The period of minority extends in males to the age of twenty-one years; and in females to that of eighteen years; but all minors obtain their majority by marriage.

Contracts of minors.

§ 2561. (1036) A minor is bound, not only by contracts for necessities, but also by his other contracts, unless he disaffirms them within a reasonable time after he attains his majority, and restores to the other party all money or property received by him by virtue of said contract, and remaining within his control at any time after attaining his majority.

Cases in which minors cannot disaffirm.

§ 2562. (1037) No contract can be thus disaffirmed in cases where on account of the minor's own misrepresentations as to his majority, or from his having engaged in business as adult, the other party had good reason to believe the minor capable of contracting.

(1) See post Code of Civil Procedure.

§ 2563. ⁽¹⁰³⁸⁾ When a contract for the personal services of a minor has been made with him alone, and those services are afterwards performed, payment made therefor to such minor in accordance with the terms of the contract, is a full satisfaction for those services, and the parent or guardian cannot recover therefor a second time.

Contracts for the personal services of minors.

CHAPTER III.

MASTER AND APPRENTICES.

SECTION.	SECTION.
2564 Minor child may be bound; indenture; idle, vicious or vagrant children.	2569 Duty of master; duty of apprentice; master may discharge apprentice for bad conduct.
2565 Selectmen may bind out children.	2570 Death or removal dissolves the indenture.
2566 Power of master.	2571 Agreements in Territories and States.
2567 Who must watch over interests of the minor.	2572 Guardianship of minor child.
2568 Ill-treatment deemed a sufficient cause of discharge of apprentice	2573 Indentures must be strictly observed.
	2574 Minor child to be sent to school.

§ 2564. ⁽¹⁰³⁹⁾ Any minor child may be bound to service until the attainment of the age of legal majority; such binding must be by written indenture, specifying the terms of agreement, age of the minor (if known), and shall moreover be signed by the minor if over twelve years of age. Nothing herein shall be so construed as to prevent the selectmen or probate court from binding out any idle, vicious or vagrant minor child without his or her consent, or the consent of the parent or guardian of such minor child, if such parent or guardian neglects, refuses, or otherwise fails in properly controlling the actions and education of such minor, and does not train him or her up in some useful avocation.

Any minor child may be bound.

Feb. 7, 1852.

Indenture.

Idle, vicious, or vagrant children

Selectmen
may bind out
minor chil-
dren.

§ 2565. (1040) It is hereby made the duty of selectmen to look after, and take notice of all such cases, and when they shall find the minor child incorrigible, and the parents unable, unwilling, or negligent as hereinbefore mentioned, bind him or her out to some suitable person to be trained to some useful vocation.

Powers of
master.

§ 2566. (1041) The powers, liabilities and duties of master, and the rights of the apprentice, are the same as those of parent and child respectively, except as to inheritance, and except as is otherwise provided by law.

Who must
watch over
the interests of
the minor.

§ 2567. (1042) The parent, guardian, or officer, by whose act or consent any minor is thus bound, must watch over the interests of the minor so bound, and take measures for his or her relief, whenever circumstances shall justify, or the true interest of the minor child shall require it.

Ill-treatment
deemed suffi-
cient cause of
discharge of
apprentice.

§ 2568. (1043) If the master shall ill-treat his apprentice, or in any manner palpably fail in the discharge of his duties in regard to said apprentice, the said apprentice may be discharged from further service, and may moreover recover damages, and compensation for services.

Duty of mas-
ter.

§ 2569. (1044) It shall be the duty of the master to correct and teach such minor child to observe the principles of good order and industry, and train him or her to some useful avocation. And it is hereby made the duty of such minor

Duty of ap-
prentice.

child to observe obedience to, and respect for, the requirements of the master. But if the apprentice bound as aforesaid, shall refuse to serve according to the terms of the indenture, or grossly misbehave, and the master shall be incapable or unable to influence or control such apprentice, he may be discharged from further obligations or liability, at the discretion of the court; and in the event of a dissolution, the apprentice shall receive such allowance for the service previously rendered as may be considered just under the circumstances of the case.

Death or re-
moval
dissolves the
indenture.

§ 2570. (1045) The death of the master, or his removal from the Territory, works a dissolution of the indentures, unless otherwise provided therein, or unless the apprentice shall elect to continue in his service.

Agreements
in other
Territories and
States.

§ 2571. (1046) Any person, apprentice or servant, who shall have so elected, or agreed to render service in any other Territory, State or country, shall come under the same regulations and requirements as herein provided, all such agree-

ments or indentures for services being held as inviolate and binding, as if they had been entered into, and executed within this Territory.

§ 2572. (1047) If from habitual intemperance, and vicious and brutal conduct, or from vicious, brutal, and criminal conduct towards said minor child, the parent of the same shall be considered an unsuitable person to retain the guardianship, or control the education of said child, the judge of the probate court or selectmen may appoint a suitable person to be the guardian of such child, and may, if deemed expedient, also cause said minor child to be bound as an apprentice to some suitable person, during his or her minority. Nothing herein shall be so construed as to take such minor child, if either the father or mother be a proper guardian.

§ 2573. (1048) The strict observance of the provisions of the indentures on the part of the master and apprentice must be considered essential to entitle either party to the benefits arising under the provisions of this act, and the selectmen or the probate court shall enquire into such observance before either awarding compensation or damages, or otherwise discharging or releasing either party from the requirements of such indentures, or the provisions of law in such cases made and provided. Nothing herein contained shall be so construed as to effect a release of either party from service or obligation, as the case may be, where the agreement or indentures have been entered into in any foreign state or country, or in this Territory for a longer period.

§ 2574. (1049) The master shall send the said minor child to school between the ages of six and sixteen, three months in each year if there be a school in the district or vicinity; and at all times, and in all cases the master shall clothe the minor child in a comfortable and becoming manner.

CHAPTER IV.

ADOPTION OF CHILDREN.

SECTION.	SECTION.
2575-2576 How children may be adopted; statement in writing; contents verified; witnesses.	2579 Conclusive as to whom.
2577 Notice of hearing to be published.	2580 Married persons when not eligible to adopt a child.
2578 Decree.	2581 When responsibility of parent ceases.
	2582 Fees of probate judge.

March 13, 1884.
Manner of
adopting
children.

§ 2575. s 1. Any person desiring to adopt the child of another may do so in the following manner.

§ 2576. s 2. The parents, guardians or other person or persons having lawful control, or custody of any minor child may make a statement in writing before the probate judge of the county where the person desiring to adopt such child resides, that he, she or they, voluntarily relinquish all right to the custody of, and power and control over such child (naming such child), and all claim and interest in and to the services and wages of such child, to the end that such child shall be fully adopted by the party desiring to adopt such child, which statement shall be signed and sworn to by the party making the same before said probate judge, in the presence of at least two witnesses; and the person desiring to adopt such child shall also make a statement in writing to the effect that he or she freely and voluntarily adopts such child (naming the child) as his or her own, with such limitations and conditions as shall be agreed upon by the parties. Said statement shall also be signed and sworn to by the party making the same before said probate judge, in the presence of at least two witnesses; *Provided*, In all cases where such child shall be of the age of fourteen years and upward, the written consent of such child shall be necessary to the validity of such proceeding; *And provided further*, Whenever it shall be desirable, the party adopting such child may, by stipulations to that effect in such statement, adopt such child and bestow upon him or her equal rights, privileges, and immunities of children born in lawful wedlock, and such statement shall be filed with and recorded by said probate judge, in a book kept in his office for that purpose.

Proviso.

§ 2577. s 3. And such probate judges shall appoint a time and place for the hearing of said matter, and shall give three weeks' notice thereof to all persons who may be interested therein, by publication thereof in a newspaper published in said county, and in case no paper is published in said county then the notice shall be published in a newspaper printed in the Territory, having general circulation in said county.

Notice to be given of time of hearing.

§ 2578. s 4. At the time and place of hearing such matter, if said hearing shall not be adjourned, the said probate judge shall render a decree therein, in accordance with the conditions and stipulations of said statement: *Provided*, In case it shall appear to the satisfaction of such probate judge, that such proceedings are not for the best interest of the child or children, he may refuse to enter such decree, and the matter shall thereupon be dismissed.

Court to render a decree.

Proviso.

§ 2579. s 5. All decrees entered in such case in conformity with the provisions and requirements hereinbefore named, shall be conclusive upon all the persons interested [in] such proceedings, and the child or children thus adopted, shall take the surname of the person adopting the same and all relations of parents and child, agreeably to such stipulations and the decree of the probate court shall attach, and such child or children, if so stated in such decree, shall be subject to the exclusive control and custody of such parent or parents and shall possess and enjoy all the rights, privileges, inheritances, heirship and immunities of children born in lawful wedlock.

Decree, when entered, to be conclusive upon all persons, etc.

§ 2580. s 6. A married man not lawfully separated from his wife, cannot adopt a child without the consent of his wife; nor can a married woman, not thus separated from her husband, without his consent, provided the husband or wife not consenting is capable of giving such consent.

Married persons may not adopt children, except, etc.

§ 2581. s 7. The parents of an adopted child are, from the time of the adopting, relieved of all parental duties towards, and all responsibility for, the child so adopted, and have no right over it.

When responsibility of parents ends.

§ 2582. s 8. The probate judge shall be entitled to charge the same fees for such services as now are provided by law for services in other cases.

Fees of probate judge.

CHAPTER V.

AN ACT REGULATING MARRIAGE.

SECTION.	SECTION.
2583 Marriages are cestuous and void within what degrees.	2592 License to be returned to clerk.
2584 Certain marriages are prohibited and void.	2593 License and certificate to be filed and recorded.
2585 Issue in certain case legitimate.	2594 Penalty for solemnizing marriages without license.
2586 Courts of equity jurisdiction may declare void certain marriages.	2595 Penalty for solemnizing marriage without authority.
2587 Marriages valid elsewhere, valid here.	2596 Penalty for solemnizing forbidden marriages.
2588 Marriage not invalid in certain cases.	2597 Penalty for issuing a license for a prohibited marriage
2589 Marriages solemnized by whom.	2598 In the absence of clerk, probate judge to issue license.
2590 No marriage solemnized without a license.	2599 Marriages may be avoided or affirmed by a court of equity.
2591 License not to be issued to minors without parents' consent.	2600 Fines where paid.
	2601 Fees of clerk.

March 8, 1888

Marriages within what degree are cestuous and void

§ 2583. s 1. Be it enacted, etc.: That marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and neices or aunts and nephews, or between any persons related to each other within and not including the fourth degree of consanguinity, computed according to the rules of civil law, are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate.

Certain marriages are prohibited and declared void

§ 2584. s 2. Marriage is prohibited and declared void:

1. With an idiot or lunatic.
2. When there is a husband or wife living, from whom the person marrying has not been divorced.
3. When not solemnized by an authorized person, except as provided in section 7 of this act.
4. When at the time of marriage the male is under fourteen, or the female is under twelve years of age.
5. Between a negro and a white person.
6. Between a Mongolian and a white person.

§ 2585. s 3. When the marriage is contracted in good faith and with the belief of the parties, that a former husband

or wife, then living was dead or legally divorced, the issue of such marriage, born or begotten before notice of the mistake, shall be the legitimate issue of both parents.

§ 2586, s 4. Courts having general equity jurisdiction may declare void a marriage obtained by force or fraud, or at the instance of any next friend, where the male was under sixteen, or the female under fourteen years of age at the time of the marriage, and the marriage was without the consent of the father, mother, guardian or other person having the proper charge of his or her person, and has not been ratified, by cohabitation after that age.

§ 2587, s 5. Marriages solemnized in any other county, State or Territory, if valid when solemnized, are valid here.

§ 2588, s 6. No marriage solemnized before any person professing to have authority therefor, shall be invalid for want of such authority, if it is consummated with the belief of the parties, or either of them, that he had authority and that they have been lawfully married.

§ 2589, s 7. Marriages shall be solemnized by the following persons only:

1. Ministers of the gospel or priests of any denomination, in regular communion with any religious society.

2. Probate judges, justices of the peace and judges of the district and supreme courts.

§ 2590, s 8. No marriage shall be solemnized without a license therefor, issued by the clerk of the probate court of the county in which the female resides at the time; *Provided*, That when she is of full age or a widow, and it is issued on her application in person or by writing, signed by her, it may be issued by the clerk of any probate court.

§ 2591, s 9. If at the time of applying for license the male shall be under twenty-one, or the female under eighteen years of age, and not before married, no license shall issue without the consent of his or her father, mother or guardian, personally given or certified in writing to the clerk over his or her signature, attested by two or more subscribing witnesses, and proved by the oath of one of them, administered by the clerk. When the parties are personally unknown to the clerk, a license shall not issue until an affidavit is made before the clerk, which shall be filed and preserved by him, by the party applying for such license, showing that there is no lawful reason in the way of such marriage. The party

False swear-
ing is perjury

making such affidavit, or any subscribing witness, if he falsely swear therein is guilty of perjury.

Person
solemnizing
marriage shall
return license
to clerk

§ 2592. s 10. The person solemnizing the marriage shall, within thirty days thereafter, return the license to the clerk of the probate court of the county whence it issued, with a certificate of the marriage over his signature, giving the date and place of celebration and the names of two or more witnesses present at the marriage. For failing to make such return, he is guilty of a misdemeanor.

License and
certificate to
be filed and
recorded

• § 2593. s 11. The license, together with the certificate of the person officiating at the marriage, shall be filed and preserved by the said clerk and shall be recorded by him in a book kept for that purpose, which shall be properly indexed in the names of the parties so married.

Penalty for
solemnizing
marriage with-
out license

§ 2594. s 12. If any person shall solemnize a marriage without such license, he shall be imprisoned not less than one nor more than twelve months in the county jail, or fined not more than one thousand dollars, or both fined and imprisoned.

Penalty for
solemnizing
marriage with-
out authority
or falsely per-
sonating or
forging name
of parents.

§ 2595. s 13. If any person, not authorized, shall solemnize a marriage under pretense of having authority, or falsely personate the father, mother or guardian in obtaining a license, or forges the name of any father, mother, or guardian to any writing purporting to give consent to such marriage, he shall be punished by imprisonment in the penitentiary not exceeding three years.

Penalty for
solemnizing
forbidden
marriages.

§ 2596. s 14. If any authorized person shall knowingly, with or without license, solemnize a marriage, such as is herein prohibited, he shall be imprisoned in the penitentiary not exceeding three years, or fined not exceeding one thousand dollars, or both fined and imprisoned.

Penalty of
clerk for issu-
ing license for
a prohibited
marriage.

§ 2597. s 15. Every clerk or deputy clerk who shall knowingly issue a license for any prohibited marriage, shall be punished by confinement in the penitentiary for a term not exceeding two years or fined in any sum not exceeding one thousand dollars, or by both fine and imprisonment, and in case of conviction, shall be expelled from his office by the judgment of the court before which his conviction is had. And if he wilfully issue a license contrary to his duty as herein prescribed, he shall be fined not exceeding one thousand dollars.

§ 2598. s 16. In the absence of the clerk, or during a vacancy in the office, the license may be issued by the probat

judge, who in so doing shall perform the duty and incur all the responsibilities of the clerk, and be liable to the same penalties, and shall return a memorandum thereof to the clerk and the same shall be recorded as if issued by him.

In the absence of the clerk the probate judge shall issue license.

§ 2599. s 17. When doubt is felt as to the validity of a marriage, either party may, in a court of equity, demand its avoidance or affirmance, but when one of the parties was within the age of consent at the time of the marriage, the other party being of proper age, shall have no such proceeding for that cause against the party under age.

If a doubt exists as to validity of marriage it may be recorded or affirmed by a court of equity.

§ 2600. s 18. All fines collected for any violation of this act, shall be paid into the treasury of the Territory.

Fines paid into the treasury.

§ 2601. s 19. The clerks of the several probate courts shall be entitled, for each license issued, the sum of one dollar, and for recording the same, when returned to him, the sum of one dollar and twenty-five cents, all of which he may demand at the time of issuing the license.

Fees of clerks

CHAPTER VI.

DIVORCE. (1)

SECTION.	SECTION.
2602 Causes for which divorce may be granted.	2606 Order in relation to children and property.
2603 Husband may obtain divorce.	2607 Rights forfeited by guilty party.
2604 Decree of divorce may be deferred one year.	2608 Punishment of persons who seek to separate husband and wife.
2605 Complaint, evidence, decree.	
<p>Grounds of divorce. Feb. 2, 1887.</p> <p>Plaintiff must have been resident for one year.</p> <p>Grounds on which decrees of divorce may issue.</p>	<p>§ 2602. (1151) Proceedings in divorce shall be commenced and conducted in the manner provided by law for proceedings in civil cases, except as hereinafter provided, and the court may decree a dissolution of the marriage contract between the plaintiff and defendant, in all cases wherein the plaintiff, for one year next prior to the commencement of the proceedings shall have been an actual and bona fide resident of the county within the jurisdiction of the court, for any of the following causes, to-wit: first, impotency of the defendant at the time of marriage; second, adultery committed by defendant subsequent to marriage; third, wilful desertion of plaintiff by defendant for more than one year; fourth, wilful neglect of defendant to provide for his wife the common necessities of life; fifth, habitual drunkenness of defendant; sixth, conviction of defendant for felony; seventh, cruel treatment of plaintiff by the defendant to the extent of causing great bodily injury or great mental distress to plaintiff.</p> <p>§ 2603. (1152) The husband may in all cases obtain a divorce from his wife for the like causes, and in the same manner as the wife obtains a divorce from her husband.</p> <p>§ 2604. (1153) Nothing herein contained shall be so construed as to prevent courts of probate from deferring their decree of a divorce, when the same is applied for, to any specified time, not exceeding one year, when it appears to him that a compromise might at a future time be made between the parties. During the time of such deference on the</p>
<p>Husband may obtain divorce. March 6, 1852</p> <p>Decree of divorce may be deferred one year. March 6, 1852.</p>	

(1) District courts have exclusive jurisdiction in actions for divorce. See Edmunds Tucker Bill, Sec. 12; also § 26, Code of Civil Procedure, 84.

part of the court, the bonds and engagements of matrimony may not be violated by the parties.

§ 2605. ⁽¹¹⁵⁴⁾ The complaint or petition shall be in writing, and verified by the oath of the plaintiff, and no decree in divorce shall be granted by any court upon default, or otherwise, except upon legal testimony taken in the cause, and in case a reference is ordered, the referees shall report in writing the testimony in full, and the court, in all cases in divorce, shall make and file its findings and decrees upon the testimony.

Complaint to be verified by oath of plaintiff.
No decree upon default except upon testimony taken.
Feb. 2, 1878.
Referees shall report testimony in full.
Court shall file its findings on decrees with the testimony.
Order in relation to children and property.
March 6, 1892.

§ 2606. ⁽¹¹⁵⁵⁾ When a divorce is decreed, the court shall make such order in relation to the children and property of the parties, and the maintenance of the wife, and such portion of the children as may be awarded to her, as may be just and equitable; *Provided*, That if the children shall have attained the age of ten years, and possess sound mind, they shall have the privilege to select of their own free will and choice, to which of their parents they will attach themselves; *Provided further*, That the parties may, with the approval of the court, themselves agree upon the distribution of the property and disposal of the children; *Provided further*, That when it shall appear to the court at a future time, that it would be for the interest of the parties concerned, that a change should be effected in regard to the former disposal of children or distribution of property, the court shall have power to make such change as will be conducive to the best interest of all parties concerned.

§ 2607. ⁽¹¹⁵⁶⁾ When a divorce is decreed, the defendant or guilty party forfeits all rights acquired by marriage.

Rights forfeited by guilty party.

§ 2608. ⁽¹¹⁵⁷⁾ It shall be the duty of the courts of probate in their respective counties, to punish by fine or imprisonment, or both, at their discretion, any person or persons who shall stir up unwarrantable litigation between husband and wife, or seek to bring about a separation between them.

Punishment for persons who seek to separate husband and wife.

PART SIXTH.

RELATING TO PROPERTY:

ITS MANAGEMENT AND TRANSFER.

CHAPTER I.

REAL PROPERTY.

SECTION.	SECTION.
2609 Persons enclosing unclaimed government land or possessing improvements on the same, to be deemed lawful owners.	2626 Officer to certify.
2610 How and by whom lands conveyed.	2627 Party must be personally known or identified on oath.
2611 Deed notice when recorded; but good between parties.	2628 What to show.
2612 Deed when filed imparts notice.	2629 Form of certificate.
2613 When void as to subsequent purchaser.	2630 Same when grantor unknown.
2614 Power of attorney, etc.	2631 Proof, by whom made.
2615 Revocation of power.	2632 No proof unless witness personally known or proven.
2616 Evidence.	2633 What must be proven.
2617 Evidence when original is lost.	2634 What certificate must show; form of certificate.
2618 Only <i>prima facie</i> .	2635 When no proof of handwriting taken.
2619 When it must be established.	2636 No certificate to be granted unless, etc.
2620 After acquired title inures to grantees of prior deed.	2637 Subpœna for witnesses.
2621 Party out of possession may convey.	2638 Penalty for disobedience; <i>pro viso</i> , proof otherwise.
2622 Existing instruments on record impart notice; but not to affect vested rights.	2639 When entitled to be recorded.
2623 Copies as evidence.	2640 Married women.
2624 Proof or acknowledgment.	2641 Discharge of mortgage or deed of trust; damages for not discharging.
2625 Proof or acknowledgment, before whom made in this Territory; in any other State or Territory; in foreign countries; by deputy.	2642 On certificate.
	2643 How same recorded.
	2644 Definition.
	2645 Same.
	2646 Legalizing certain deeds.

§ 2609. s 1. Any person who has enclosed, or may hereafter enclose, a portion or portions of unclaimed government

land, or caused it to be done at his expense; or has purchased, or may hereafter purchase, such enclosure: or erect, cause to be erected, or purchased any building or other improvement thereon, or may hereafter do so, is hereby declared to be the lawful owner of the claim to the possession of such enclosed land, and the lawful owner of the improvements thereon and thereunto appertaining; and he shall be so deemed and held in all legal proceedings, and in all rights and doings pertaining or relating to the aforesaid property.

Person enclosing
to be deemed
government
land, or
purchasing
improvements
on the same to
be deemed
lawful owner.

CONCERNING CONVEYANCES.

§ 2610. ⁽⁶¹⁷⁾ Conveyances of lands, or of any estate or interest therein, may be made by deed, signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and by one or more credible witnesses, and acknowledged or proved, and recorded as provided in this act.

How and by
whom lands
conveyed.
Feb. 29, 1871

§ 2611. ⁽⁶¹⁸⁾ That every conveyance of real estate, and every instrument of writing, setting forth an agreement to convey any real estate, or whereby any real estate may be affected, proved, acknowledged and certified in the manner prescribed by this act, to operate as notice to third persons, shall be recorded in the office of the recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto without such record, and to all other persons who have had actual notice.

Deed notice
when recorded

But good be-
tween the
parties.

§ 2612. ⁽⁶¹⁹⁾ That every such conveyance or instrument of writing, acknowledged or provided, and certified and recorded in the manner prescribed by this act, and every patent to lands within this Territory, duly executed and verified according to law, and recorded as provided by this act, shall, from the time of filing the same with the recorder, for record, impart notice to all persons of the contents thereof and subsequent purchasers, mortgagees, and lien-holders shall be deemed to purchase and take with notice.

Deed when
filed imparts
notice.

§ 2613. ⁽⁶²⁰⁾ That every conveyance of real estate within this Territory hereafter made, which shall not be recorded as provided in this act, shall be void as against any subsequent

When void as
to subsequent
purchaser

purchaser, in good faith and for a valuable consideration, of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded.

Power of
attorney, etc.

§ 2614. ⁽⁶²¹⁾ That every power of attorney, or other instrument in writing, containing the power to convey any real estate, as agent or attorney for the owner thereof, or to execute, as agent or attorney for another, any conveyance whereby any real estate is conveyed or may be affected, shall be acknowledged or proved, and certified and recorded, as other conveyances whereby real estate is conveyed or affected, are required to be acknowledged or proved and certified and recorded.

Revocation of
power

§ 2615. ⁽⁶²²⁾ That no such power of attorney or other instrument certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded, or canceled of record as provided by law.

Evidence

§ 2616. ⁽⁶²³⁾ That every conveyance or other instrument conveying or affecting real estate, which shall be acknowledged or proved and certified, as prescribed by law, may, together with the certificate of acknowledgment or proof, be read in evidence without further proof.

Evidence
when original
is lost, etc.

§ 2617. ⁽⁶²⁴⁾ That when any such conveyance or instrument is acknowledged or proved, certified and recorded in the manner prescribed by this act, and it shall be shown to the court that such conveyance or instrument is lost, or not within the control of the party wishing to use the same, the record thereof, or the transcript of such record, certified by the recorder under the seal of his office, may be read in evidence without further proof.

Only *prima*
facie.

§ 2618. ⁽⁶²⁵⁾ That neither the certificate of the acknowledgment, nor of the proof of any such conveyance or instrument, nor the record nor the transcript of the record of such conveyance or instrument, shall be conclusive, but the same may be rebutted.

When it must
be established

§ 2619. ⁽⁶²⁶⁾ That if the party contesting the proof of any such conveyance or other instrument, shall make it appear that any such proof was taken upon the oath of an in-

incompetent witness, neither such conveyance nor instrument nor the record thereof, shall be received as evidence until established by other competent proof.

§ 2620. ⁽⁶²⁷⁾ That if any person shall hereafter convey any real estate by conveyance purporting to convey the same in fee simple absolute, and shall not at the time of such conveyance have the legal estate in such real estate, but shall afterwards acquire the same, the legal estate subsequently acquired shall immediately pass to the grantee, and such conveyance shall be as valid as if such legal estate had been in the grantor at the time of the conveyance. After acquired title inures to grantee of prior deed.

§ 2621. ⁽⁶²⁸⁾ That any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the same manner and with the same effect as if he were in the actual possession thereof. Parts out of possession may convey.

§ 2622. ⁽⁶²⁹⁾ That all instruments of writing, now copied into the books of record of the office of the county recorders of the several counties of this Territory, shall, after the passage of this act, be deemed to impart to subsequent purchasers and incumbrancers, and to all other persons whomsoever, notice of all deeds, mortgages, powers of attorney, contracts, conveyances, or other instruments, so far as, and to the extent that the same may be found recorded, copied, or noted in the said books of record, notwithstanding any defect, omission or informality existing in the execution, acknowledgment, certificate of acknowledgment, recording, or certificate of recording the same; *Provided*, That nothing herein contained shall be construed to affect any rights heretofore acquired in the hands of subsequent grantees or assignees. Existing instruments on record impart notice. But not to affect vested rights.

§ 2623. ⁽⁶³⁰⁾ That duly certified copies of such instruments as are embraced in the preceding section of this act, may be read in evidence under the same circumstances and rules as are provided in this act for using copies of instruments duly executed and recorded. Copies as evidence.

§ 2624. ⁽⁶³¹⁾ That every conveyance in writing whereby any real estate is conveyed or may be affected, shall be acknowledged, or proved and certified, in the manner hereinafter provided. Proof of acknowledgment.

§ 2625. ⁽⁶³²⁾ That the proof or acknowledgment of every conveyance whereby any real estate is conveyed or Same.

may be affected, shall be taken by some one of the following officers.

In this
Territory.

1. If acknowledged or proved within this Territory, by some judge or clerk of a court having a seal, or some notary public or county recorder, or by a justice of the peace of the county where the conveyance is executed and to be recorded.

In any other
State or
Territory.

2. If acknowledged or approved without this Territory, and within any State or Territory in the United States, by some judge or clerk of any court of the United States, or of any State or Territory having a seal, or by a notary public, or by a commissioner appointed by the Governor of this Territory for that purpose.

In foreign
Countries.

3. If acknowledged or proved without the United States, by some judge or clerk of any court of any State, kingdom or empire having a seal, or any notary public therein, or any minister, commissioner or consul of the United States appointed to reside therein.

By deputy.

When any of the officers above mentioned are authorized by law to appoint a deputy, such acknowledgment or proof may be taken by any such deputy in the name of his principal.

Officer to
certify.

§ 2626. ⁽⁶⁶⁶⁾ That every officer who shall take the proof or acknowledgment of any conveyance affecting any real estate, shall grant a certificate thereof, and cause such certificate to be endorsed or annexed to such conveyance, such certificate shall be:

1. When granted by any judge or clerk, under the hand of such judge or clerk, and the seal of the court.

2. When granted by an officer who has a seal of office, under the hand and official seal of such officer.

3. When granted by a justice of the peace, then under his hand.

Party must be
personally
known or
identified on
oath.

§ 2627. ⁽⁶⁶⁷⁾ That no acknowledgment of any conveyance whereby any real estate is conveyed, or may be affected, shall be taken unless the person offering to make such acknowledgment shall be personally known to the officer taking the same to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by the oath or affirmation of a credible witness.

What to show.

§ 2628. ⁽⁶⁶⁸⁾ That the certificate of such acknowledgment shall state the fact of acknowledgment, and that the

person making the same was personally known to the officer granting the certificate to be the person whose name is subscribed to the conveyance as a party thereto, or was proved to be such by the oath or affirmation of a credible witness, whose name shall be inserted in the certificate.

§ 2629. ⁽⁶⁸⁶⁾ That such certificate shall be substantially Form of certificate. in the following form, to-wit:

Territory of Utah, }
County of———, } ss.

On this———day of———, A. D, one thousand eight hundred and———, personally appeared before me, A. B., [a notary public, or judge, or other officer, as the case may be], in and for said county, C. D., personally known to me to be the person described in, and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, etc.

§ 2630. ⁽⁶⁸⁷⁾ That when the grantor is unknown to the judge, or other officer taking the acknowledgment, the certificate shall be substantially in the following form, to-wit: Same when grantor unknown.

Territory of Utah, }
County of———, } ss.

On this———day of———, A. D. one thousand eight hundred and———, personally appeared before me, A. B., [a notary public or judge, or other officer as the case may be], in and for said county, C. D., satisfactorily proved to me to be the person described in, and who executed the within or annexed conveyance, by the oath of E. F., a competent and credible witness for that purpose, by me duly sworn, and he, the said C. D., acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

§ 2631. ⁽⁶⁸⁸⁾ That the proof of the execution of any conveyance whereby any real estate is conveyed, or may be affected, shall be: Proof by whom made.

1. By the testimony of a subscribing witness; or,
2. When all the subscribing witnesses are dead, or cannot be had by evidence of the handwriting of the party, or of the two subscribing witnesses, given by a credible witness to each signature.

§ 2632. ⁽⁶⁸⁹⁾ That no proof by a subscribing witness

No proof unless witness personally known or proven.

shall be taken unless such witness shall be personally known to the officer taking the proof, to be the person whose name is subscribed to the conveyance as a witness thereto, or shall be proved to be such by the oath or affirmation of a credible witness.

What must be proven.

§ 2633. ⁽¹⁸⁸⁰⁾ That no certificate of such proof shall be granted, unless such subscribing witness shall prove that the person whose name is subscribed thereto as a party, is the person described in, and who executed the same; that such person executed the conveyance, and that such person subscribed his name thereto as a witness thereof, at the request of the maker of such instrument.

§ 2634. ⁽¹⁸⁸¹⁾ That the certificate of such proof shall set forth the following matters:

Certificate must show.

1. The fact that such subscribing witness was personally known to the officer granting the certificate, to be the person whose name is subscribed to such conveyance as a witness thereto, or was proved to be such by the oath or affirmation of a witness, whose name shall be inserted in the certificate.

2. The proof given by such witness of the execution of such conveyance, and of the facts that the person whose name is subscribed to such conveyance as a party thereto, is the person who executed the same, and that such witness subscribed his name to such conveyance as a witness thereof. That such certificate shall be substantially in the following form, to wit:

Form of certificate.

Territory of Utah, }
County of ———, } ss.

On this ——— day of ———, A. D., one thousand eight hundred and ———, before me, A. B., [a notary public, judge or other officer as the case may be], in and for said county, personally appeared C. D., personally known to me, [or satisfactorily proved to me by the oath of E. F., a competent and credible witness for that purpose, by me duly sworn], to be the same person whose name is subscribed to the annexed instrument as a witness thereto, who, being by me duly sworn, deposes and says that he resides in ———, county of ———, and Territory of Utah; that he was present and saw G. H., personally known to him to be the same person described in, and who executed the annexed instrument as a party thereto, sign, seal and deliver the same, and heard him acknowledge that he executed the same freely and volun-

tarily, and for the uses and purposes therein mentioned, and that he, the deponent, thereupon signed his name as a subscribing witness thereto, at the request of the said G. H.

In witness whereof, etc.

§ 2635. ⁽⁶⁴²⁾ That no proof by evidence of the hand-writing of the party, or of the subscribing witnesses, shall be taken, unless the officer taking the same shall be satisfied that all the subscribing witnesses to such conveyance are dead, out of the jurisdiction, or cannot be had to prove the execution thereof. When no proof by hand-writing taken.

§ 2636. ⁽⁶⁴³⁾ That no certificate of any such proof shall be granted unless a competent and credible witness shall state on oath or affirmation, that he personally knew the person whose name is subscribed thereto as a party, well knew his signature [stating his means of knowledge], and believes the name of the person subscribed thereto as a party, was subscribed by such person; nor unless a competent and credible witness shall in like manner state that he personally knew the person whose name is subscribed to such conveyance as a witness, well knew his signature [stating his means of knowledge], and believes the name subscribed thereto as a witness was thereto subscribed by such person. No certificate to be granted unless, etc.

§ 2637. ⁽⁶⁴⁴⁾ That upon the application of any grantee, in any conveyance required by law to be recorded, or by any person claiming under such grantee, verified under the oath of the applicant, that any witness to such conveyance residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgement or proof of such conveyance, may issue a subpoena requiring such witness to appear before such officer, and testify touching the execution thereof. Subpoena for witness.

§ 2638. ⁽⁶⁴⁵⁾ That every person, who, being served with a subpoena, shall, without reasonable cause, refuse, or neglect to appear, or, appearing, shall refuse to answer upon oath touching the matters aforesaid, shall be liable to the party injured for such damages as may be sustained by him on account of such neglect or refusal, and may also be committed to prison by the judge of some court of record, there to remain, without bail, until he shall submit to answer upon oath as aforesaid; but no person shall be required to attend who resides Penalty for disobedience.

out of the county in which the proof is to be taken, nor unless his reasonable expenses shall have first been tendered to him: *Provided however*, That if it shall appear to the satisfaction of the officer so authorized to take such acknowledgment, that such subscribing witness purposely conceals himself, or keeps out of the way, so that he cannot be served with a subpoena, or taken on attachment, after the use of due diligence to that end, or in case of his continued failure or refusal to testify for the space of one hour after his appearance shall have been compelled by process, then said conveyance, or other instrument, may be proved and admitted to record in the same manner as if such subscribing witness thereto were dead.

Proof other-
wise.

When entitled
to be recorded.

§ 2639. ⁽¹⁹⁴⁶⁾ That a certificate of the acknowledgment of any conveyance, or of the proof of the execution thereof, as provided in this act, signed by the officer taking the same, and under the seal of the officer, if he have one, shall entitle such conveyance, with the certificate or certificates as aforesaid to be recorded in the office of the recorder of the county in which the real estate is situated.

Married
women.

§ 2640. ⁽¹⁹⁴⁷⁾ That a married woman may convey any of her real estate, or any interest therein, by conveyance thereof, executed and acknowledged and certified in the same manner as provided in this act for other persons.

Discharge of
mortgage or
deed of trust.

§ 2641. ⁽¹⁹⁴⁸⁾ Any mortgage or deed of trust to secure the payment of a sum of money that has been, or may hereafter be recorded, may be discharged by an entry in the margin of the record thereof, signed by the mortgagee or trustee, or his personal representative or assignee, stating the satisfaction of the mortgage or deed of trust, in the presence of the recorder or his deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release duly acknowledged and recorded. If the mortgagee fail to discharge or release any mortgage after the same has been fully satisfied, he shall be liable to the mortgagor for double the damages resulting from such failure. Or the mortgagor may bring an action against the mortgagee to compel the discharge or release of the mortgage, after the same has been satisfied. And the judgment of the court must be, that the mortgagee discharge or release the mortgage and pay the mortgagor the costs of suit, including a reasonable attorney's fee, and all damages resulting from such failure.

Damages for
not releasing
mortgages.
March 18, 1884.

§ 2642. ⁽⁶⁴⁹⁾ Any mortgage or deed of trust may also On certificate. be discharged upon the record thereof, by the recorder in whose custody it shall be, whenever there shall be presented to him a certificate, executed by the mortgagee or trustee, his representative or assignee, acknowledged or proved and certified as hereinbefore prescribed to entitle conveyances to be recorded, specifying that such mortgage or deed of trust has been paid, or otherwise satisfied or discharged.

§ 2643. ⁽⁶⁵⁰⁾ Every such certificate, and the proof of How same recorded acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book containing such record in the minute of the discharge of such instrument, made by the recorder upon the record thereof.

§ 2644. ⁽⁶⁵¹⁾ That the term "real estate," as used in; Definitions. this act, shall be construed as co-extensive in meaning with land, tenements, hereditaments and mining and land claims.

§ 2645. ⁽⁶⁵²⁾ That the term "conveyance," as used in Same. this act, shall be construed to embrace every instrument in writing by which any real estate, or interest in real estate, is created, aliened, mortgaged or assigned, except wills and leases for a term not exceeding one year. The term "seal" shall include a scroll.

§ 2646. s 1. All deeds heretofore made and executed Legalizing certain deeds executed under the Town site Act. Feb. 20, 1880 by the mayors of cities, and probate judges of counties in this Territory, under Chapter IV., Title XIX., of the Compiled Laws of Utah, (1) that do not appear to have been signed or executed before any subscribed witness, or which are not subscribed by any witness or witnessess, as required by any existing law of this Territory, at the time of making such deed or instrument, or where such deeds or instruments have been acknowledged before, and certified by county clerks in this Territory, are hereby validated and confirmed: and such deeds or instruments shall have the same force and effect as if they had been originally signed and executed by subscribing witnesses thereto; and the record thereof and the record of the deeds and instruments so acknowledged before and certified by county clerks, if they shall have been admitted to record, shall impart notice to the same extent as though such signing and execution had been duly witnessed and the acknowledgment made, taken and certified, as required by the law in force at the time of such execution and acknowledgment.

CHAPTER II.

WILLS AND SUCCESSION.

TITLE I.

WILLS.

CHAPTER I. *Execution and Revocation of Wills.*CHAPTER II. *Interpretation of Wills.*CHAPTER III. *General Provisions Relating to Wills.*

CHAPTER I.

EXECUTION AND REVOCATION OF WILLS.

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- 2676 Afterborn child, unprovided for, to succeed.
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- 2678 Share of afterborn child, out of what part of estate to be paid.
- 2679 Advancement.
- 2680 Death of devisee, being relative in lifetime of testator, leaving lineal descendants.
- 2681 Devises of land, how construed.
- 2682 Carries after acquired rights.

§ 2647. s 2. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in Title II. of this act, being chargeable in both cases, with the payment of all the decedent's debts, as provided in an act relating to Procedure of Probate Courts in the settlement of estates.

Who may
make a will.
March 13, 1884.

§ 2648. s 3. A will, or a part of a will, procured to be made by duress, menace, fraud, or undue influence, may be denied probate; and a revocation, procured by the same means, may be declared void.

Will, or part
thereof, pro-
cured by
fraud.

§ 2649. s 4. A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills.

Separate prop-
erty of married
women.

§ 2650. s 5. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, but corporations other than those formed for scientific, literary, religious, charitable, benevolent, or solely educational purposes, cannot take under a will, unless expressly authorized by statute.

Who may take
by will.

§ 2651. s 6. Every will, other than a nuncupative will, must be in writing, and every will other than an olographic and nuncupative will, must be executed and attested as follows:

Written will,
how to be exe-
cuted
March 11, 1886

1. It must be subscribed at the end thereof by the testator himself.

2. The subscription must be made in the presence of the attesting witnesses.

3. The testator must, at the time of subscribing the same, declare to the attesting witnesses that the instrument is his will; and

4. There must be two attesting witnesses, each of whom must sign his name as a witness, at the end of the will, at the testator's request, in his presence and in the presence of each other.

§ 2652. s 7. An olographic will is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this Territory, and need not be witnessed. Such wills may be proven in the same manner as other private writings.

Definition of
an olographic
will.
March 13, 1884.

Witness to old residence § 2653. s 8. A witness to a written will must write, with his name, his place of residence. But a violation of this section does not affect the validity of the will.

Mutual will § 2654. s 9. A conjoint or mutual will is valid, but it may be revoked by any of the testators, in like manner with any other will.

Incompetency of subscribing witnesses. § 2655. s 10. If the subscribing witnesses to a will are competent at the time of attesting its executoin, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and the allowance of the will, if it is otherwise satisfactorily proved.

Conditional will § 2656. s 11. A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition.

Gifts to subscribing witnesses void. § 2657 s 12. All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto are void, unless there are other two competent

Creditors competent witnesses. subscribing witnesses to the same; but a mere charge on the estate of the testator for the payment of debts, does not prevent his creditors from being competent witnesses to his will.

Witness who is a devisee, who would be entitled to share of estate if no will, entitled to share to amount of devise. § 2658. s 13. If a witness to whom any beneficial devise, legacy, or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to him.

Will not duly executed, void. § 2659. s 14. No will made out of this Territory is valid as a will in this Territory, unless executed according to the provisions of this chapter.

Republication by codicil. § 2660. s 15. The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil.

Nuncupative will, how to be executed. § 2661. s 16. A nuncupative will is not required to be in writing, nor to be declared or attended with any formalities.

Requisites of a valid nuncupative will. § 2662. s 17. To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

1. The estate bequeathed must not exceed in value the sum of one thousand dollars.

2. It must be proved by two witnesses, who were present at the making thereof, one of whom was asked by the testator at the time to bear witness that such was his will, or to that effect.

3. The decedent must have been at that time in expectation of immediate death from an injury, or casualty happening or occurring within twenty-four hours previous to the making of such nuncupative will.

§ 2663. § 18. No proof must be received of any nuncupative will, unless it is offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken. Proof of nuncupative wills.

§ 2664. § 19. Except in the cases in the chapter mentioned, no written will, nor any part thereof, can be revoked or altered otherwise than: Written wills, how revoked.

1. By a written will, or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

2. By being burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

§ 2665. § 20. When a will is canceled or destroyed by any other person than the testator, the direction of the testator, and the fact of such injury or destruction must be proved by two witnesses. Evidence of revocation.

§ 2666. § 21. The revocation of a will, executed in duplicate may be made by revoking one of the duplicates. Revocation of duplicate

§ 2667. § 22. A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but, in other cases, the prior will remains effectual so far as consistent with the provisions of the subsequent will. Revocation by subsequent will.

§ 2668. § 23. If after making a will, the testator duly makes and executes a second will, the destruction, cancellation, or revocation of such second will, does not revive the first will unless it appears by the terms of such revocation that it Antecedent not revived by revocation of subsequent will.

was the intention to revive and give effect to the first will, or unless, after such destruction, cancellation or revocation, the first will is duly republished.

Revocation by marriage and birth of issue.

§ 2669. s 24. If, after having made a will, the testator marries, and has issue of such marriage, born either in his lifetime or after his death, and wife or issue survives him, the will is revoked unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision: and no other evidence to rebut the presumption of such revocation can be received.

Effect of marriage of a woman on her will.

§ 2670. s 25. If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless provision has been made for her marriage contract, or unless she is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision: and no other evidence to rebut the presumption of revocation must be received.

Contract of sale not a revocation.

§ 2671. s 26. An agreement made by a testator, for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal: but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise against the testator's successors, if the same had passed by succession.

Mortgage not a revocation of a will.

§ 2672. s 27. A charge or incumbrance upon any estate, for the purpose of securing the payment of money, or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devises and legacies therein contained must pass, subject to such charge or incumbrance.

Conveyance when not a revocation.

§ 2673. s 28. A conveyance, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation: but the will passes the property which would otherwise devolve by succession.

When it is a revocation.

§ 2674. s 29. If the instrument by which an alteration is made, in the testator's interest in a thing previously disposed of by his will expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend

on a condition or contingency by reason of which they do not take effect.

§ 2675. s 30. The revocation of a will revokes all its Revocation of
codicils.
codicils.

§ 2676. s 31. Whenever a testator has a child born Afterborn
child, unpro-
vided for to
succeed.
after the making of his will either in his lifetime or after his death, and dies, leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate.

§ 2677. s 32. When any testator omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section. Children or
issue of chil-
dren of testat-
or, unprovided
for by his will

§ 2678. s 33. When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in the will as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from all the devisees or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in such case such specific devise, legacy or provision may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted. Share of after-
born child, out
of what part of
estate to be
paid.

§ 2679. s 34. If such children, or their descendants, so Advancement
during life-
time of testat-
or.
unprovided for, had an equal proportion of the testator's estate bestowed on them, in the testator's lifetime, by way of advancement, they take nothing in virtue of the three preceding sections.

§ 2680. s 35. When any estate is devised to any child, or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee would have done had he survived the testator. Death of de-
visee, being
relation of
testator, in life
time of testat-
or, leaving
lineal
descendants.

Devises of
land, how
construed.

§ 2681. s 36. Every devise of land in any will conveys all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate.

Will to pass
right acquired
after the mak-
ing thereof.

* § 2682. s 37. Any estate, right, or interest in lands acquired by the testator after the making of his will, passes thereby, and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator, every will made in express terms, devising, or in any other terms denoting the intent of the testator to devise all the real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease.

CHAPTER II.

INTERPRETATION OF WILLS.

SECTION.	SECTION.
2683 Testator's intention to be carried out.	2701 Words of donation and limitation.
2684 To be ascertained from the will.	2702 To what time words refer.
2685 Rules of interpretation.	2703 Devise or bequest to a class.
2686 Several instruments to be taken together.	2704 When conversion takes effect.
2687 To be harmonized if possible; latter part prevails against other repugnant parts.	2705 When child born after testator's death will take under will.
2688 Devises, etc., not affected by reason, etc.	2706 Mistakes and omissions.
2689 When ambiguous or doubtful.	2707 When devises and bequests vest.
2690 Words taken in ordinary sense.	2708 When can not be divested.
2691 Every expression to have some effect, rather than the contrary.	2709 Death of devisee or legatee.
2692 Intestacy to be avoided.	2710 Interests in remainder are not affected.
2693 Effect of technical words.	2711 Conditional devises or bequests.
2694 Such words not necessary.	2712 Condition precedent, what is.
2695 Not to pass a fee.	2713 Effect of condition precedent.
2696 Power to devise, how executed.	2714 When deemed performed.
2697 Devise of all one's estate.	2715 Condition subsequent, what is.
2698-2699 Residuary clause.	2716 Devisees, etc., take as tenants in common.
2700 Testamentary disposition to "heirs," "relations," etc.	2717 Advancements, when ademp- tions.

Testator's in-
tention to be
carried out.

§ 2683. s 1. A will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible.

§ 2684. s 2. In case of uncertainty arising upon the face of a will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will taking in view the circumstances under which it was made, exclusive of his oral declarations.

§ 2685. s 3. In interpreting a will, subject to the law of this Territory, the rules prescribed by the following sections of this Chapter, are to be observed, unless an intention to the contrary clearly appears.

§ 2686. s 4. Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument.

§ 2687. s 5. All the parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistent whole; but where several parts are absolutely irreconcilable, the latter must prevail.

§ 2688. s 6. A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will.

§ 2689. s 7. Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will.

§ 2690. s 8. The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

§ 2691. s 9. The words of a will are to receive an interpretation which will give to every expression some effect rather than one which will render any of the expressions inoperative.

§ 2692. s 10. Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

§ 2693. s 11. Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention.

§ 2694. s 12. Technical words are not necessary to give effect to any species of disposition by will.

§ 2695. s 13. The term "heirs," or other words of inheritance, are not requisite to devise a fee, and a devise of

real property passes all the estate of the testator, unless otherwise limited.

Power to devise, how executed by terms of will

§ 2696. s 14. Real or personal property embraced in a power to devise passes by a will purporting to devise all the real or personal property of the testator.

Devise or bequest of all real or personal property, or both

§ 2697. s 15. A devise or bequest of all the testator's real or personal property, in express terms, or in any other terms denoting his intent to dispose of all his real and personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death.

Residuary clause

§ 2698. s 16. A devise of the residue of the testator's real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will.

Same.

§ 2699. s 17. A bequest of the residue of the testator's personal property passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will.

Heirs, relations, issue, descendants, etc.

§ 2700. s 18. A testamentary disposition to "heirs," "relations," "nearest relation," "representatives," "legal representatives," or "personal representatives," or "family," "issue," "decendants," "nearest" or "next of kin" of any person, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the title on succession in this act.

Words of donation and limitation.

§ 2701. s 19. The terms mentioned in the last section are used as words of donation, and not of limitation, when the property is given to the person so designated directly, and not as a qualification of an estate given to the ancestor of such person.

To what time words refer.

§ 2702. s 20. Words in a will referring to death or survivorship, simply relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession.

Devise or bequest to a class.

§ 2703. s 21. A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description before the time to which possession is postponed.

§ 2704. s 22. When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property from the time of the testator's death.

When conversion takes effect.

§ 2705. s 23. A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

When child born after testator's death takes under will.

§ 2706. s 24. When applying a will, it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intentions cannot be received.

Mistakes and omissions.

§ 2707. s 25. Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

When devises and bequests vest.

§ 2708. s 26. A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

When cannot be divested.

§ 2709. s 27. If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in section 37, Chapter I., of this act.

Death of devisee or legatee.

§ 2710. s 28. The death of a devisee or legatee of a limited interest before the testator's death does not defeat the interest of persons in remainder, who survive the testator.

Interests in remainder are not affected.

§ 2711. s 29. A conditional disposition is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated.

Conditional devises or bequests.

§ 2712. s 30. A conditional precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.

Condition precedent, what.

§ 2713. s 31. Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled, except where such fulfilment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

Effect of condition precedent.

Condition precedent, when deemed performed.

§ 2714. s 32. A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally complied with.

Condition subsequent, what.

§ 2715. s 33. A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event.

Devises, etc., taken as tenants in common.

§ 2716. s 34. A devise or legacy given to more than one person vests in them as owners in common.

Advancements when ademption.

§ 2717. s 35. Advancements or gifts are not to be taken as ademptions of general legacies, unless such intention is expressed by the testator in writing.

CHAPTER III.

GENERAL PROVISIONS.

SECTION.	SECTION.
2718 Legacies: specific; demonstrative; annuities, specific, residuary and general.	2728 A legacy may be satisfied before death; in what case.
2719 Intestate estates, real and personal, entire, subject to the debts.	2729 Legacies, when due.
2720 Order in which testate estates subject to debts.	2730 Interest.
2721 How in which testate estates subject to payment of legacies.	2731 Provisions controlled by testator's intention.
2722 Legacies to persons related or not related.	2732 Intention as to person to be executor.
2723 Abatement.	2733 Executors can not be empowered to appoint as executors.
2724 Specific devises and legacies.	2734 Executor not to act until he qualifies.
2725 Conveyance by heir good, unless a probated will of within four years.	2735 Provisions as to revocations.
2726 Possession of legatees.	2736 Execution and construction of prior wills.
2727 Bequest of interest or income.	2737 The law of what place applies.
	2738 Liabilities of beneficiaries for testator's obligations.

Nature and designation of legacies.

§ 2718. s 1. Legacies are distinguished and designated according to their nature, as follows:

Specific.

March 13, 1854.

1. A legacy of a particular thing, specified and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort cannot be had to the other property of the testator.

2. A legacy is demonstrative when the particular fund or Demonstrative personal property is pointed out from which it is to be taken or paid; if such fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy.

3. An annuity is a bequest of certain specified sums Annuities periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets as in case of a general legacy.

4. A residuary legacy embraces only that which remains Residuary. after all the bequests of the will are discharged.

5. All other legacies are general legacies. General.

§ 2719. s 2. When a person dies intestate all his prop- Order of sale in case of an intestate. erty, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this act and the act relating to procedure of probate courts in the settlement of estates.

§ 2720. s 3. The property of a testator, except as other- Order of sale in case of a testator. wise specially provided for in this act and the act relating to procedure of probate courts in the settlement of estates must be resorted to for the payment of debts, in the following order:

1. The property which is expressly appropriated by the will for the payment of the debts.

2. Property not disposed of by the will.

3. Property which is devised or bequeathed to a residuary legatee.

4. Property which is not specifically devised or bequeathed; and

5. All other property ratably. Before any debts are paid, the expenses of the administration and the allowance to the family must be paid or provided for.

§ 2721. s 4. The property of a testator, except as Legacies, how charged with debts. otherwise specially provided in this act, and the act relating March 13, 1884. to procedure of probate courts in the settlement of estates, must be resorted to for the payment of legacies, in the following order:

1. The property which is expressly appropriated by the will for the payment of the legacies.

2. Property not disposed of by the will.

3. Property which is devised or bequeathed to a residuary legatee.

4. Property which is specifically devised or bequeathed.
 Legacies to related and not related. § 2722. s 5. Legacies to husband, widow, or kindred of any class are chargeable only after legacies to persons not related to the testator.
- Abatement. § 2723. s 6. Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.
- Specific devises and legacies. § 2724. s 7. In a specific devise or legacy, the title passes by the will, but possession can only be obtained from the personal representative, and he may be authorized by the probate court to sell the property devised and bequeathed, in the cases herein provided.
- Heir's conveyance good unless will is proved within four years. § 2725. s 8. The rights of a purchaser or incumbrancer of real property, in good faith and for value derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise is duly proved as a will, and recorded in the office of the clerk of the probate court having jurisdiction thereof, or unless written notice of such devise is filed with the recorder of the county where the real property is situated, within four years after the devisor's death.
- Possession of legatees. § 2726. s 9. Where specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that, on his disease, it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative, as the case may be.
- Bequest of interest. § 2727. s 10. In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.
- Satisfaction. § 2728. s 11. A legacy or gift in contemplation, fear, or peril of death, may be satisfied before death.
- Legacies, when due. March 13, 1884. § 2729. s 12. Legacies are due and deliverable at the expiration of one year after the testator's decease. Annuities commence at the testator's decease.
- Interest. § 2730. s 13. Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease.

§ 2731. s 14. The four preceding sections are in all cases to be controlled by a testator's express intention. Construction of these rules.

§ 2732. s 15. Where it appears, by the terms of a will, that it was the intention of the testator to commit the execution thereof and the administration of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary in like manner as if he had been named executor. Executor according to the terms of the will.

§ 2733. s 16. An authority to an executor to appoint an executor is void. Power to appoint is invalid.

§ 2734. s 17. No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he may pay funeral charges, and take necessary measures for the preservation of the estate. Executor not to act until qualified.

§ 2735. s 18. The provisions of this Chapter [Title] in relation to the revocation of wills apply to all wills made by any testator living at the expiration of one year from the time it takes effect. Provisions as to revocation.

§ 2736. s 19. The provisions of this Chapter [Title] do not impair the validity of the execution of any will made before it takes effect or affect the construction of any such will. Execution and construction of prior wills not affected.

§ 2737. s 20. The validity and interpretation of wills, wherever made, are governed, when relating to property within this Territory, by the law of this Territory. The law of what place applies.

§ 2738. s 21. Those to whom property is given by will are liable for the obligations of the testator in the cases and to the extent prescribed by the act relating to procedure of probate courts in the settlement of estates. Liability of beneficiaries for testator's obligations.

TITLE II.

SUCCESSION.

SECTION.	SECTION.
2739 Succession defined.	2751 When they exceed or fall short of such share.
2740 Property, real and personal, passes to heir, subject to control of probate court, and possession of administrator.	2752 What are advancements.
2741 Rules of succession.	2753 Value of, how determined.
2742 Illegitimate children inherit in certain cases.	2754 When heir advanced to dies before decedent.
2743 The mother is successor to illegitimate child.	2755 Inheritance of husband and wife from each other.
2744-2748 Degrees of kindred, how computed.	2756 When estate goes to decedent's mother.
2749 Relatives of half-blood inherit equally with whole-blood in same degree.	2757 Inheritance by right of representation.
2750 Advancements part of distributive share.	2758 Aliens resident inherit like citizens; non-resident excluded.
	2759 When succession not claimed, how probate court to proceed.
	2760 Successor liable for decedent's obligations.

Succession defined.

March 13, 1884

§ 2739. s 1. Succession is the coming in of another to take the property of one who dies without disposing of it by will.

Who first succeeds to possession of estates not devised

§ 2740. s 2. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by that court for the purposes of administration.

Succession to and distribution of property.

§ 2741. s 3. When any person having title to any estate not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this act and the act relating to procedure of probate courts in the settlement of estates subject to the payment of his debts, in the following manner:

1. If the decedent leave a surviving husband or wife, and only one child, or the issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living, or one child living, and the

issue of one or more deceased children: one-third to the surviving husband or wife, and the remainder in equal shares to his children, and to the issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all of the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leave issue, the whole estate goes to such issue, and if such issue consists of more than one child living, or one child living, and the issue of one or more deceased children, then the estate goes in equal shares to children living, or to the child living, and the issue of the deceased child or children by right of representation.

2. If the decedent leave no issue, the estate goes one-half to the surviving husband or wife, and the other to the decedent's father and mother, in equal shares, and if either be dead, the whole of said half goes to the other. If there be no father or mother, then one-half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation. If the decedent leave no issue, nor husband nor wife, the estate must go to his father and mother in equal shares, or if either be dead, then to the other. March 18, 1884.

3. If there be neither issue, husband, wife, father nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation.

4. If the decedent leave a surviving husband or wife, and neither issue, father, mother, brother, nor sister, the whole estate goes to the surviving husband or wife.

5. If the decedent leave neither issue, husband, wife, fathers, mother, brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote.

6. If a decedent leave several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married,

all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

7. If, at the death of such child who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parents descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

8. If the decedent be a widow or widower, and leave no kindred, and the estate or any portion thereof was common property of such decedent and his or her deceased spouse, while such a spouse was living, such common property shall go to the father of such deceased spouse, or if he be dead, to the mother. If there be no father nor mother, then such property shall go to the brothers and sisters of such deceased spouse, in equal shares, and to the lawful issue of any deceased brother or sister of such deceased spouse, by right of representation.

March 13, 1884.

9. If the decedent leave no husband, wife, or kindred and there be no heirs to take the estate or any portion thereof, under subdivision 8 of this section, the same shall be disposed of in the manner provided in section 22 of this Title, for the disposal of estates of non-resident foreigners.

Illegitimate children to inherit in certain events.

§ 2742. s 4. Every illegitimate child is an heir of the person who acknowledges himself to be the father of such child; and in all cases is an heir of his mother; and inherits his or her estate, in whole or in part as the case may be, in the same manner as if he had been born in lawful wedlock. The issue of all marriages null in law, or dissolved by divorce, are legitimate. (1)

The mother is successor to illegitimate child.

§ 2743. s 5. If an illegitimate child dies intestate, without lawful issue, his estate goes to his mother, or, in case of her decease, to her heirs at law.

Degrees of kindred, how computed.

§ 2744. s 6. The degree of kindred is established by the number of generations, and each generation is called a degree.

§ 2745. s 7. The series of the degrees forms the line; ^{same} the series of degrees between persons who descend from one another is called direct or lineal consanguinity, and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity.

§ 2746. s 8. The direct line is divided into a direct line ^{same} descending and a direct line ascending. The first is that which connects the ancestors with those who descend from him. The second is that which connects a person with those from whom he descends.

§ 2747. s 9. In the direct line there are as many degrees ^{same} as there are generations. Thus the son is, with regard to the father, in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather towards the sons and grandsons.

§ 2748. s 10. In the collateral line the degrees are ^{same} counted by generations, from one of the relations up to the common ancestor and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins german in the fourth, and so on.

§ 2749. s 11. Kindred of the half-blood inherit equally ^{Relatives of the half-blood.} with those of the whole-blood in the same degree, unless the inheritance come to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are ^{March 13, 1884.} not of the blood of such ancestor must be excluded from such inheritance.

§ 2750. s 12. Any estate, real or personal, given by the decedent in his lifetime as an advancement to any child, or other lineal descendant, is a part of the estate of the decedent for the purposes of division and distribution thereof among his issue, and must be taken by such child or other lineal descendant, toward his share of the estate of the decedent. ^{Advancements constitute part of distributive share.}

§ 2751. s 13. If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent. ^{Advancements when too much, or not enough.}

What are advancements.

§ 2752. s 14. All gifts and grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such by the child or other successor or heir.

Value of advancements, how determined.

§ 2753. s 15. If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value in the division and distribution of the estate: otherwise, it must be estimated according to its value when given, as nearly as the same can be ascertained.

When heir advanced to, dies before decedent.

§ 2754. s 16. If any child, or other lineal descendant receiving an advancement, dies before the decedent, leaving issue, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them.

Inheritance of husband and wife from each other.

§ 2755. s 17. The provisions of the preceding sections of this chapter, as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedents.

Estate goes to the mother; to the father, when

§ 2756. s 18. If the decedent leave no issue, nor husband nor wife, and the mother be living, the estate goes to the mother. If the decedent leave an estate which came to him as an advancement from his father, and he be living, such estate goes to the father.

Inheritance by representation March 13, 1884.

§ 2757. s 19. Inheritance or succession by "right of representation" takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken in living. Posthumous children are considered as living at the death of their parents.

Aliens may inherit, when and how.

§ 2758. s 20. Resident aliens may take in all cases by succession as citizens; and no person capable of succeeding under the provisions of this Title is precluded from such succession by reason of the alienage of any relative; but no non-resident foreigner can take by succession unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession.

§ 2759. s 21. When succession is not claimed as provided in the preceding section, the probate court must proceed as provided in Chapter XI. of the "Act relating to procedure of probate courts in the settlement of estates."

Succession not claimed, how property must be sold.

§ 2760. s 22. Those who succeed to the property of a decedent are liable for all his obligations in the cases and to the extent prescribed by the act relating to procedures of probate courts in the settlement of estates.

Successor liable for decedent's obligations.

AN ACT CONCERNING OCCUPYING CLAIMANTS.

SECTION.

SECTION.

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|---|--|
| 2761 Occupying claimants entitled to be paid for lasting improvements. | 2768 Successful claimant may demand the value of the land or pay amount assessed against him. |
| 2762 The provisions of this act apply to claimants of lands sold for taxes. | 2769 If successful claimant pay the amount awarded against him he shall have a writ of possession. |
| 2763 When judgment rendered, jury, how drawn. | 2770 Successful claimant entitled to possession if tender of deed is made and value refused. |
| 2764 Jury to value improvements, damages and the land without improvements. | 2771 When occupying claimant entitled to decree for title. |
| 2765 If juror be disqualified, additional may be drawn. | 2772 Plaintiff entitled to execution for possession only under this act. |
| 2766 Jury to report to the clerk; for good cause the court may order a new valuation. | 2773 In certain cases purchase money must be refunded. |
| 2767 Court shall render judgment. | 2774 When act takes effect. |

§ 2761. s 1. In all cases, any occupying claimants, being in quiet possession of any lands or tenements for which such person can show a plain and connected title, in law or equity derived from the records of some public office, or being in quiet possession of, and holding the same by deed, devise, descent, contract, bond or agreement, from and under any person claiming title as aforesaid, derived from the record of some public office, or by deed duly authenticated and recorded, or being in quiet possession of, and holding the same under sale on execution or order of sale, against any person claiming title as aforesaid, derived from the records of some public office, or by deed duly authenticated and re-

occupying claimants in certain cases entitled to be paid for lasting improvements made by them on occupied land
March 8, 1888.

corded; or being in possession of, and holding any land under any sale for taxes authorized by the laws of this Territory, or any person in quiet possession of any land, claiming title thereto and holding the same under sale and conveyance, made by executors, administrators, or guardians, or by any other person or persons in pursuance of any order of the court or decree in chancery, when lands are or have been directed to be sold and the purchaser or purchasers thereof have obtained title to and possession of the same without any fraud or collusion on his or her, or their part, shall not be evicted or turned out of possession by any person or persons who shall set up and prove an adverse and better title to said lands until said occupying claimant, his, her or their heirs shall be paid the full value of all lasting and valuable improvements made on such lands by such occupant claimant, or by the person or persons under whom he, she or they may hold the same, previous to receiving actual notice by the commencement of suit on such adverse claim by which eviction may be effected unless such occupying claimant shall refuse to pay the person so setting up and proving an adverse and better title; the value of the land without the improvements made thereon as aforesaid, upon the demand of the successful claimant or his heirs as hereinafter provided; *Provided*, That this article shall not apply to persons occupying and claiming any lands granted to this Territory, or granted to, or purchased by any company to aid in the construction of any works of internal improvement in this Territory.

Not to apply
to certain
cases

The provisions of
this act
apply to
claimants
of land sold
for taxes

§ 2762. s 2. The title by which the successful claimant succeeds against the occupying claimant in all cases of lands sold for taxes by virtue of any of the laws of this Territory, shall be considered an adverse and better title under the provisions of this act, whether it be the title under which the taxes were due, and for which said land was sold, or any other title or claim whatever; and the occupying claimant holding possession of land sold for taxes as aforesaid, having the deed of a collector of taxes, or county clerk, or other proper officer for such sale for taxes, or a certificate of sale of said land from a collector of taxes or other proper officer, or shall claim under the person or persons who hold such deed or certificate, or any other title or claim whatever shall be considered as having sufficient title to said land to demand the value of improvements under the provisions of this act.

§ 2763. s 3. The court rendering judgment in any case provided for by this act against the occupying claimant, shall at the request of either party cause a journal entry thereof to be made; and the sheriff, or United States marshal and clerk of the court, when thereafter required by either party, shall meet and draw from the jury box a jury of twelve men of the jurymen returned to serve as such for the proper district, in the same manner as the clerk and marshal of court are required by law to draw a jury in other cases; and immediately thereupon the clerk shall issue an order to the sheriff or marshal under the seal of the court, setting forth the name of the jury, and the duty to be performed under this act.

When judgment rendered without jury to be made.

Jury to assess the value of improvements.

§ 2764. s 4. The jury drawn and named in said order shall immediately, on being notified by the sheriff or marshal, proceed to view the premises in question, and then and there, on oath or affirmation, to be administered by any competent authority, assess the value of all lasting and valuable improvements made as aforesaid, on the lands in question previous to the party receiving actual notice as aforesaid, of such adverse claim; and shall also assess the damages, if any, which said land may have sustained by waste, together with the net annual value of the rents and profits which the occupying claimant may have received from the same after having received notice of the plaintiff's title by service of a summons, and deduct the amount thereof from the estimated value of such lasting and valuable improvements; and said jury shall also assess the value of the land in question, at the time of rendering judgment as aforesaid, without the improvements made thereon or damages sustained by waste as aforesaid.

Jury to value improvements.

And assess damages to land with rents.

And assess value of the land without improvements

§ 2765. s 5. In case any one or more of the jury named in said order, shall be absent from the district, or of kin to either party, or from any other cause, disqualified or unable to serve upon such jury, additional jurymen shall be drawn or summoned in the same manner as if originally drawn and named in said order.

If any juror drawn be disqualified additional may be drawn.

§ 2766. s 6. The jury shall sign and seal their respective assessments and valuations aforesaid, and deposit the same with the clerk of the court by whom they were appointed, before the first day of the next term of said court after said order is made; and if either party shall think himself or herself aggrieved by any such assessment or valuation

Jury to seal their assessments and valuations and deposit with the clerk.

aforesaid, he or she may apply to the court at the term to which the proceedings are returned, and said court may, upon good cause shown, set aside such assessment or valuation and order a new valuation, and appoint another jury as hereinbefore provided, who shall proceed in the same manner as hereinbefore directed.

Court may for good cause set aside the assessment and valuation and order new one.

If jury report a sum in favor of plaintiff, court shall render judgment without pleadings.

§ 2767. s 7. If the jurors shall report a sum in favor of the plaintiff or plaintiffs in said action, for the recovery of real property on the assessment and valuation of the valuable and lasting improvements, and the assessments of damages for waste, and net annual value of the rents and profits, the court shall render a judgment therefor without pleadings, and issue executions thereon as in other cases: or if no excess be reported in favor of said plaintiff or plaintiffs, then in either case the said plaintiff or plaintiffs shall be thereby barred from having or maintaining any action for mere profits.

If jury report a sum in favor of occupying claimant, successful claimant may demand value of land or pay sum allowed by jury.

§ 2768. s 8. If the jurors shall report the same in favor of the occupying claimant or claimants, on the assessment and valuation of the valuable and lasting improvements, deducting therefrom the damages, if any sustained by waste, with the net annual value of rents and profits which the defendant or defendants may have received after commencement of the action of ejectment as aforesaid, the successful claimant, his heirs, they being minors, may at his or her, or their election either demand of the occupying claimant the value of the land without improvement so as aforesaid assessed, and tender a deed of the land in question to the occupying claimant, or he, she or they may pay the occupying claimant the sum so allowed by the jurors in his favor within such reasonable time as the court shall allow.

If successful claimant pay the amount awarded against him, he shall have a writ of possession

§ 2769. s 9. If the successful claimant, his heirs, or the guardian of such heirs, they being minors, shall elect to pay and do pay to the occupying claimant, the sum so reported in his favor by the jurors, within such reasonable time as the court may have allowed for the payment thereof, then a writ of possession shall issue in favor of said successful claimant, his heirs, or the guardian of such heirs.

§ 2770. s 10. If the successful claimant, his heirs, or the guardian of said heirs, they being minors, shall elect to receive the value without improvements, so as aforesaid assessed to be paid by the occupying claimant within such reasonable time as the court may allow, and shall tender a

general warrantee deed of the land in question, conveying such adverse or better title within said time allowed by the court for the payment of the money in this section mentioned, and the occupying claimant mentioned shall refuse or neglect to pay said money (the value of the land without improvement) to the successful claimant, his heirs or their guardians, within the time limited aforesaid, then a writ of possession shall be issued in favor of said successful claimant, his heirs or their guardians.

§ 2771. s 11. The occupying claimant, or his heirs, shall in no case be evicted from the possession of such land, unless as is provided in the two preceding sections, when an application is made for the value of improvements under this law; and in all cases where the occupying claimant or claimants, or his or their heirs shall have paid into court the value of the lands in question, without improvements, within the time allowed by the court (when an election has been made by the successful claimant or claimants, his or their heirs or guardians as aforesaid, to surrender any tract of land under the provisions of this act) such occupant, or his heirs, may at any time after such payment shall have been made, filed his, her, or their petition in the court where such judgment of eviction was obtained, and obtained a decree for the title of such land if the same has not been previously conveyed to such occupant as aforesaid.

§ 2772. s 12. The plaintiff shall be entitled to an execution for the possession of his property in accordance with the provisions of this act, but not otherwise.

§ 2773. s 13. Whenever any land sold by an executor, administrator, guardian, sheriff or marshal or commissioner of court, is afterwards recovered in the proper action of any person originally liable or in whose hands the land would be liable to pay the demand or judgment, for which or for whose benefit the land was sold or any one claiming under such person, the plaintiff shall not be entitled to the possession of the land until he has refunded the purchase money with interest, deducting therefrom the value of the use, rents and profits and injury done by waste and cultivation, to be assessed under the provisions of this act.

§ 2774. s 14. This act shall take effect from and after its passage and approval.

[Approved, March 8th, 1888.]

If successful claimant elect to preserve value of land and tender deed therefor, and payment is refused or neglected, he is entitled to writ of possession

Occupying claimant shall not be evicted if he apply for value of improvements

When occupying claimant pays value of land into court it is successful claimant elect to receive it, he is entitled to a decree for title

Plaintiff entitled to execution for possession only under this act

Land sold by executor, sheriff, etc., afterwards recovered by certain person not entitled to possession until purchase money is refunded

Act takes effect when

CHAPTER II.

WATER RIGHTS.

SECTION.	SECTION.
2775 Selectmen made water commis-	2782-2783 Continued.
sioners; their duties.	owner; may be conveyed with
2776 Disputes as to water rights, how	land.
settled; commissioners have	2784 Exempt from taxation.
power to administer oaths.	2785 Waste of surplus water pro-
2777 Certificates to parties having	hibited; damages caused by to
water rights.	aggrieved party.
2778 To be recorded.	2786 Definition of terms.
2779 Suits not to be brought until	2787 Preference rights to use water.
commissioners have decided.	2788 Right of way for certain pur-
2780 Vested rights for certain uses of	poses.
water.	2789 Corporations may be formed for
2781 Secondary rights.	distribution of water, with
2782-2783 Water rights, how meas-	power to levy taxes and assess-
ured; may be personal prop- erty or otherwise at option of	ments, and form irrigation dis-
	tricts.

County select-
men created
water commis-
sioners; their
powers and
duties.
Feb. 20, 1880.

§ 2775. s 1. The selectmen of the several counties of this Territory are hereby created ex-officio water commissioners for their respective counties, whose powers and duties shall be to make, or cause to be made and recorded, such observations, from time to time, as they may deem necessary, of the quantity and flow of water in the natural sources of supply, and to determine, as near as may be, the average flow thereof at any season of the year, and to receive, hear and determine all claims to the use of water, and on the receipt of satisfactory proof of any right to the use of water having vested, to issue to the person owning such right a certificate therefor for recording, and to generally oversee, in person, or by agents appointed by them, the distribution of water within their respective counties, from natural sources of supply, to all the corporations, or persons, having joint rights in and to any natural source of supply, and to fairly distribute, according to the nature and extent of recorded rights, and according to law, to each of said corporations, or persons, their several portions of such water; and in case of dispute between any of such persons, or corporations, as to the nature, or extent, of their rights to the use of water, or right of way, or damages therefor, of any one or more of

such persons, or corporations, to hear and decide upon all such disputed rights, and to file a copy of their findings and decisions as to such rights, with the county recorder, and to distribute the water according to such findings or decision, unless otherwise ordered by a court of competent jurisdiction.

§ 2776. s 2. In cases where persons, or corporations, use water in different counties from the same natural source of supply, the water commissioners of each of said counties shall unite in appointing, either from among their number or otherwise, as they may determine, a board of reference of not less than three competent persons, to hear and decide all disputes in regard to water rights in and to such natural source of supply, and they shall file a copy of their decision with the county recorders of each of said counties; said water commissioners and members of the board of reference shall each, respectively, have power to administer oaths, and if any person who may be duly sworn in any matter in relation to the nature, extent, or exercise of any right or duty under any of the provisions of this act, shall falsely swear, such person shall be deemed guilty of perjury.

§ 2777. s 3. The certificate of the water commissioners shall state generally the nature and extent of the right to use water of the person, or corporation, to whom it is issued, and must be filed with the county recorder for recording.

§ 2778. s 4. It shall be the duty of the county recorder of each county, upon any certificate of water commissioners being filed in his office, as prescribed by this act, and upon any findings or decisions of any commissioners, or board of reference, as to the extent of any of such rights, and upon payment of the fees allowed by law for such service, to record, in a book, or books, to be kept by him for such purposes, all such certificates, findings and decisions, which said record shall be deemed to impart notice to all persons whomsoever of the contents thereof, and shall be *prima facie* evidence of the existence and verity of the facts therein recited.

§ 2779. s 5. No person, or corporation, shall maintain any suit, at law or in equity, for the determination of the existence or extent of any right, or rights, to the use of water in this Territory, until after the decision of the proper county commissioners, or of the proper board of reference, as the case may be, unless said commissioners, or board, shall fail

Deposited as to
WATER RIGHTS
Law settled

Feb. 20, 1880.
Commission-
ers derive
power to
administer
oaths.

Certificates
to be issued
showing
extent of
water rights.

County
recorder
must record
certificates

No suits to be
maintained
for water
rights until
after the
commission-
ers have
rendered their
decision.

and neglect to hear and decide such person's claim of right to use of water for more than three months after such person may have presented, in writing, his claim, or claims, and evidence in support thereof, for adjudication. *Provided*, This section shall not be construed to affect or impair the authority or jurisdiction of any court in the issuance of a temporary injunction or restraining order in such cases, or to abridge the right of any person aggrieved by any such decision to maintain any lawful suit, or appeal, after such decision may have been made.

Right of
appeal.

Vested rights,
Feb. 20, 1880.

§ 2780. s 6. A right to the use of water for any useful purpose, such as for domestic purposes, irrigating lands, propelling machinery, washing and sluicing ores, and other like purposes, is hereby recognized and acknowledged to have vested and accrued, as a primary right, to the extent of, and reasonable necessity for such use thereof, under any of the following circumstances:

1. Whenever any person or persons shall have taken, diverted and used any of the unappropriated water of any natural stream, water course, lake, or spring, or other natural source of supply.

2. Whenever any person or persons shall have had the open, peaceable, uninterrupted and continuous use of water for a period of seven years.

Secondary
rights.

§ 2781. s 7. A secondary right to the use of water for any of said purposes is hereby recognized and acknowledged to have vested and accrued (subject to the perfect and complete use of all primary rights) to the extent of and reasonable necessity for such use thereof, under any of the following circumstances:

1. Whenever the whole of the waters of any natural stream, watercourse, lake, spring, or other natural source of supply has been taken, diverted and used by prior appropriators for a part, or parts, of each year only; and other persons have subsequently appropriated any part, or the whole, of such water during any other part of such year, such person shall be deemed to have acquired a secondary right.

2. Whenever, at the time of an unusual increase of water exceeding seven years' average flow of such water, at the same season of each year, all the water of such average flow then being used by prior appropriators, and other per-

sons appropriate and use such increase of water, such persons shall be deemed to have acquired a secondary right.

§ 2782. s 8. A right to the use of water may be measured by fractional parts of the whole source of supply, or by such fractional parts, with a limitation as to periods of time when used, or intended to be used; or it may be measured by cubic inches, with a limitation as to periods of time when used, or intended to be used; or it may be measured by cubic inches, with a limitation specifying the depth, width and declination of the water at point of measurement, and, if necessary, with a further limitation, as to periods of time when used, or intended to be used, and such right may be appurtenant to the land upon which such water is used, or it may be personal property, at the option of the rightful owner of such right, and a change of the place of use of water shall in no manner affect the validity of any person's right to use water, but no person shall change the place of use of water, to the damage of his co-owners in such right, without just compensation.

Rights to the use of water, how measured

Water rights may be personal property, or otherwise.

§ 2783. s 9. A continuous neglect to keep in repair any means of diverting, or conveying, water, or a continuous failure to use any right to water, for a period of seven years at any time after the passage of this act, shall be held to be abandonment and forfeiture of such right, and whenever hereafter a conveyance of any parcel of land is executed, and a right to the use of water has been continuously exercised from the time of its first appropriation, in irrigating such land, such right shall pass to the grantee of such conveyance; and in cases where such right has been exercised in irrigating different parcels of land at different times, such right shall pass to the grantee of any parcel of land on which such right was exercised next preceding the time of the execution of any conveyance thereof; subject however, in all cases, to payment by the grantee of any such conveyance, of all amounts unpaid on any assessment then due upon any such right. *Provided*, That in any of the cases mentioned in this section, any such right to the use of water, or any part thereof, may be reserved by the grantor of any such conveyance, by making such reservation in express terms inserted in such conveyance.

Neglect to use water for seven years held to be an abandonment of the right.

Water rights may be conveyed with the land.
Feb. 20, 1880.

§ 2784. s 10. All rights to the use of water, and means of diverting water, shall be exempt from taxation, except for

Water rights, the purpose of regulating the exercise of the use of such etc., exempt from taxation. right, in all cases where the land, or other property, upon which the water pertaining to such rights is assessable for taxation, but in making the assessment the assessor shall estimate the increased value of such land, or other property, caused by the use of such water.

Waste of surplus water prohibited.

§ 2785. s 11. It shall be the duty of all persons using water from any natural source of supply, to provide suitable ditches for conveying surplus water again into the natural channel, or other place of use, to the satisfaction, or approval of the water commissioners; and if, through neglect so to provide such ditches, water is allowed to form pools, or marshes, or otherwise run to waste, or if any person shall turn, or use any water in a manner that damages the property of another, except when such turning, or using is in the prudent, careful exercise of such person's lawful right to so turn, or use, such person or persons so offending shall be liable for damages to any aggrieved person entitled to the use of water from the same source of supply, and the water commissioners may, on application, or of their own motion, cause the water supply to be diverted from such offending party until such waste ditches are provided.

Persons liable for damages caused by waste water.

Definition of terms used in this act

§ 2786. s 12. Whenever the terms mentioned in this section are employed in this act, they are employed in the sense hereinafter affixed to them, except where a different sense plainly appears:

1. The term "person," when applicable, includes "firm," "partnership," "joint stock company," "association" and "corporation."

2. Words in the singular number may include the plural, and words in the masculine may include the feminine.

3. The term "continuous use" includes use for that part of each year necessary for the purpose used for.

Rights to use of water, which have preference.

§ 2787. s 14. Whenever the waters of any natural source of supply are not sufficient for the service of all those having primary rights to the use of the same, such water shall be distributed to each owner of such right in proportion to its extent, but those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for irrigating lands shall have preference over those using the same for any other purpose, except domestic purposes; *Provided*, Such preference shall

not be exercised to the injury of any vested right, without just compensation for such injury.

§ 2788, s 15. All persons shall have the right of way Right of way granted across and upon public, private and corporate lands, or other right of way, for the construction and repair of all necessary reservoirs, dams, water-gates, canals, ditches, or flumes, other means of securing and conveying water for any necessary public use, or for drainage, upon payment of just compensation therefor, but such right of way shall in all cases be exercised in a manner not to unnecessarily impair the practical use of any other right of way, highway, or public or private road, nor to unnecessarily injure any public or private property.

§ 2789, s 16. Whenever a majority of individuals own- Corporations may be formed for distribu- tion of water. ing several rights to the use of water, and a joint interest in the means of diverting or conveying such water, or who may desire to divert and use any unappropriated water, desire to organize themselves into an association for the purposes of regulating the diversion and distribution of such water, they may organize into a corporation in the manner provided in "An Act providing for incorporating associations for mining, manufacturing, commercial, and other industrial pursuits," Have power to levy and collect assessments. approved February 18, 1870, and all amendments thereto, with power to levy and collect all necessary assessments, and the distribution of water to each stockholder may be regarded as the payment of dividends, and such corporation shall have perpetual succession, unless dissolved by three years' non-use of its rights, or by a two-thirds majority vote of its members, at a meeting called for that purpose; in all cases of dissolution, the property held by the corporation, shall revert to the members, in proportion to their rights therein, or they may organize into an irrigation district, under "An Act to incor- May form irrigation districts. porate Irrigation Companies," approved January 20, 1856, as they may elect. (1)

(1) See chapter on Irrigation Companies, § 2403.

CHAPTER III.

MINING DISTRICTS AND PROPERTY.

SECTION.	SECTION.
2790 Width of mining claims.	2796 Fees.
2791 Defacing notice; unlawful interference; altering records; penalty therefor; justices have jurisdiction.	2797 Recorder of mining districts and public officers required to keep seal.
2792 Unlawfully extracting ores, and damages; arrests.	2798 Recorder of mining district; vacancies happening, where records deposited; county recorder to act in place of district recorder.
2793 Miners' lien.	2799 District recorder how to qualify.
2794 Copies, location notices, etc., recorded <i>prima facie</i> evidence; <i>proviso</i> , that recorder certify; seal of office.	2800 To be responsible for acts of deputy.
2795 County recorder to record mining rules, etc.; certified copy <i>prima facie</i> evidence.	.

Conflicting
acts repealed.
Width of min-
ing claims.
March 11, 1886.

§ 2790. s. 1. Any mining claim which shall hereafter be located upon any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper or other valuable deposits may extend three hundred feet on each side of the middle of the vein or lode at the surface.

Defacing no-
tices, etc.
Feb. 16, 1872.

§ 2791. ⁽¹²¹⁹⁾ Any person or persons who shall wilfully or maliciously tear down or deface a notice posted on a mining claim, or take up or destroy any stake or monument marking any such claim, or interfere with any person lawfully in possession of said claim, or who shall alter, erase, deface or destroy any record kept by a mining recorder, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five, nor more than one hundred dollars, or by imprisonment for not less than ten days, nor more than six months, or by both such fine and imprisonment. Justices of the peace in their respective counties shall have jurisdiction of such offences.

Unlawful in-
terference.

Altering
records.

Penalty there-
for.

Justices have
jurisdiction.

Unlawfully
extracting
ores.

§ 2792. ⁽¹²²⁰⁾ Any person wrongfully entering upon any mine or mining claim, and carrying away ores therefrom, or extracting and selling ores from any mine, being the property of another shall be liable to the owner or owners of said ore for three times the value thereof, recoverable by an action at

law; and should the plaintiff file his affidavit that the defendant did unlawfully take ores, the defendant may be arrested and held to bail, as in cases for the recovery of the possession of personal property unjustly detained. Damages, Feb. 6, 1872. Arrest.

§ 2793. ⁽¹²²¹⁾ Any person or persons who shall perform any work or labor upon any mine, or furnish any materials therefor, in pursuance of any contract made with the owner or owners of such mine, or of any interest therein, shall be entitled to a miner's lien for the payment thereof upon all the interest, right and property in such mine by the person or persons contracting for such labor or materials at the time of making such contract; said lien may be enforced in the same manner and with the same effect as a mechanic's lien, as provided by the laws of Utah. Miners' lien.

§ 2794. ⁽¹²²²⁾ Copies of notices of location of the mines, lodes and veins, and of tunnel sites recorded in the several mining districts, and of the mining rules and regulations in force in the several mining districts, in like manner recorded shall be receivable in all the courts of this Territory, as *prima facie* evidence of such notices, rules and regulations; *Provided*, The recorder of the district shall certify under his hand and seal that such copies are full, true and perfect copies from the records in his custody. The seal of office of the mining recorder so certifying, affixed to such certificate shall be *prima facie* evidence of the fact of the election and qualification and official character of such mining recorder. Copies of location notices of mines, etc., recorded, *prima facie* evidence. Feb. 18, 1876. *Provided*: that recorders certify seal of office.

§ 2795. ⁽¹²²³⁾ It shall be the duty of the county recorder, of the several counties of this Territory to record the mining rules and regulations of the several mining districts in their respective counties; and when so recorded, certified copies thereof shall be received in all the courts of this Territory, as *prima facie* evidence of such rules and regulations. County recorder to record mining rules, etc. Certified copy *prima facie* evidence.

§ 2796. ⁽¹²²⁴⁾ The mining records of the several mining districts shall be allowed the same fees for recording and making copies of any records in their custody as are now allowed by law for the services to county recorders. And it shall be the duty of each mining recorder upon request and payment or tender of the fees therefor, to make and deliver to any person requesting the same, duly certified copies of any records in his custody; and for a failure so to do, or for receiving larger fees for any such service than those herein provided, such mining recorder shall be deemed guilty of a Fees.

misdemeanor, and upon conviction thereof shall be subject to the same penalties, provided against public officers in section 20 of the act entitled "An act to regulate fees and compensation for official and other services in the Territory of Utah," passed February 20, 1874.

Re orders of mining districts public officers, and required to keep seal.

§ 2797. ⁽¹²²⁵⁾ Recorders of mining districts shall for the purposes of this act be deemed public officers, and the records in their custody shall be deemed public records, and they are hereby required to keep an official seal.

Recorder of mining district Feb. 1, 1878

§ 2798. s 5. Whenever there is a vacancy in the office of recorder of any mining district, or the person holding such office shall remove from the district leaving therein no qualified successor in office; or whenever from any cause there is no person in such district authorized to retain the custody and give certified copies, of the records, it shall be the duty of the person having custody of the records to deposit the same in the office of the county recorder of the county in which such mining district, or the greater part thereof, is situated, and the county recorder shall receive such records, and is hereby authorized to make and certify copies therefrom, and such certified copies shall be received in evidence in all courts and before all officers and tribunals in the same manner and to the same effect as if certified by a qualified recorder of the mining district. The production of a certified copy so made, shall be, without other proof, evidence that said records were properly in the custody of the county recorder.

When office is vacant or recorder disqualified records shall be deposited with county recorder

County recorder shall act in place of district recorder.

Recorders of mining districts to give bonds. Feb. 19, 1880.

§ 2799. s 1. That the recorders of the several mining districts shall each take an oath of office and give a bond with approved securities in the penal sum of one thousand dollars, which bond shall be approved by and filed in the office of the propate judge of their respective counties.

Recorder responsible for the acts of his deputy.

§ 2800. s 2. In cases where the recorder of any mining district appoints a deputy, said recorder shall be responsible for the official acts of said deputy.

CHAPTER IV.

CHATTEL MORTGAGES.

SECTION.	SECTION.
2801 Chattel mortgages void unless made according to this act where possession not delivered; affidavit.	2808 Provisions include bills of sale, etc.
2802 To be witnessed and acknowledged, and when satisfied released.	2809 How foreclosed.
2803 To be recorded where; then notice.	2810 Compensation of trustees.
2804 Fees for recording.	2811 Mortgagor liable for concealing, etc. mortgaged property.
2805 When valid as to creditors and how long.	2812 Term "mortgage" embraces deeds of trust, etc.
2806 May be attached, on what terms.	2813 Exempt property not to be mortgaged except for purchase money.
2807 Certified copies of record of mortgage evidence.	2814 Not to apply to railroad contracts for use, etc., of rolling stock, etc.

§ 2801. s 1. No mortgage of personal property shall be valid as against the rights and interests of any person, (other than the parties thereto), unless the possession of such personal property be delivered to, and retained by the mortgagee, or unless the mortgage provide that the property may remain in the possession of the mortgagor, and be accompanied by an affidavit of the parties thereto, or in case any party is absent, an affidavit of the parties present, and of the agent or attorney of such absent party, that the same is made in good faith to secure the amount named therein, and without any design to hinder or delay the creditors of the mortgagor.

§ 2802. s 2. Every mortgage of personal property shall be witnessed; acknowledged by the mortgagor, or person executing the same, and when the mortgage debt is satisfied shall be released by the mortgagee, in the same manner as is provided for mortgages of real property.

§ 2803. s 3. Every mortgage of personal property, together with the affidavit and acknowledgment thereto, shall, to constitute notice to third parties, be filed for record in the office of the recorder of the county where the mortgagor resides, or, in case he is a non-resident of this Territory, then in the respective offices of the recorders of each and every county where the personal property may be at the time of

March 13, 1881.
What necessary to validity of chattel mortgage.

Acknowledgments.

Must be recorded, to be notice to third parties, how.

the execution of the mortgage; and each of said recorders shall, on receipt of such mortgage, endorse thereon the time of filing the same with him, and shall promptly record the same, together with said affidavit and acknowledgment, in a book to be kept in his office, properly indexed and specially provided for the record of chattel mortgages, and when so recorded deliver the same to the mortgagee.

Fees for recording.

§ 2804. s 4. For his services as provided herein, the recorder shall be entitled to receive the same fees as are provided for like services in case of conveyances of real property.

Valid against creditors.

§ 2805. s 5. Any mortgage of personal property acknowledged and filed as hereinbefore provided, shall thereupon, if made in good faith, be good and valid as against the creditors of the mortgagor, and subsequent purchasers and mortgagees, from the time it is so filed for record until the maturity of the entire debt or obligation for the security of which the same was given, and for a period of ninety days thereafter: *Provided*, The entire time shall not exceed one year.

How long.

Personal property, when liable to attachment.
March 13, 1886.

§ 2806. s 6. Personal property mortgaged may be taken on attachment, if any legal cause for attachment exist, or on execution issued at the suit of a creditor of the mortgagor, but before the property is so taken, the officer must pay or tender the mortgagee the amount of the mortgage debt and interest at the place where by its terms it is made payable, if such place is within this Territory. If it specifies no place of payment, or if it be payable without this Territory, then he must deposit the amount thereof with the county treasurer of any county wherein the mortgage is recorded, payable to the mortgagee, or his order.

Copy of mortgage, in evidence.

§ 2807. s 7. A copy of any mortgage of personal property made, acknowledged, and filed for record as provided in this act, certified by the recorder in whose office the same shall be filed, may be read in evidence in any court in this Territory without further proof of the execution of the original, if said original be lost or out of the control of the person wishing to use it.

To include bills of sale, deeds, etc.

§ 2808. s 8. The provisions of the foregoing sections shall extend to and include all such bills of sale, deeds of trust, and other conveyances of personal property as shall have the effect of a mortgage or lien upon such property.

§ 2809. s 9. An action for the foreclosure of a mortgage on personal property, or the enforcement of any lien thereon, of whatever nature, may be commenced, conducted and concluded in the same manner as provided by law for the foreclosure of a mortgage or lien on real property, and without the right of redemption: *Provided*, That where the sum claimed is less than three hundred dollars, justices of the peace shall have jurisdiction for the foreclosure of the same. It shall be lawful for the mortgagor to insert in his mortgage the usual clauses of a deed of trust, with power of sale, on such notice and advertisement and in such manner as is provided for the sale of personal property taken on execution in the trustee or trustees therein named, or in the sheriff of the county wherein said property is situated, and in such cases the trustee or trustees, or the sheriff of such county may advertise and sell such personal property as may be provided in such clauses or in such deed of trust; and any such sale made as aforesaid, the mortgagee, his representatives or assigns, may in good faith purchase the property so sold or any part thereof.

Mortgages of personal property, foreclosed as mortgages on real property.

§ 2810. s 10. The trustee or trustees making a sale of mortgaged property, as in the foregoing section provided, shall be entitled to receive as compensation such fees as may be provided in such instrument, and failing such provision, or in case sales be made by sheriff, the same fees as upon sales of personal property on execution.

Trustees' compensation.

§ 2811. s 11. Any mortgagor, agent, servant or employee of any mortgagor of personal property, who shall during the time such mortgage remains in force, destroy, conceal, sell or otherwise dispose of the whole or any part of the property mortgaged, or who shall remove the same or any part thereof from the Territory, without the written consent of the mortgagee, his legal representative or assigns, shall be deemed guilty of obtaining money under false pretenses, and on conviction thereof shall be punished by a fine not exceeding three times the value of the property described in the mortgage, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment at the discretion of the court.

Mortgagor's liability for concealing, removing or destroying mortgaged property. March 13, 1884.

§ 2812. s 12. The term mortgage in the foregoing section shall embrace deeds of trust and all instruments intended as security for debt.

Defining term mortgage

Property
exempt

§ 2813. s 13. Nothing herein contained shall authorize any person to mortgage any part or portion of such person's personal property as may be by law exempt from seizure and sale under execution, except as security for the purchase money therefor.

March 11, 1886

§ 2814. s 13, 15. This act shall not apply to contracts made by any railway company owning or operating a railway in this Territory, for the possession, use and conditional purchase of rolling stock and equipment to operate such railway, and containing the condition that the title shall not pass until full payment of the purchase price; and such contracts shall be valid as to all persons without recording the same.

CHAPTER V.

RULES AND REGULATIONS UNDER TOWNSITE ACT.

SECTION.	SECTION.
2815 Duty of mayor or judge of probate under act of Congress.	2821 Authorities to make statement.
2816 Public notice to be given after entry.	2822 Proportionate fee or tender must be made before deed can be demanded; when payments to be made.
2817 Within what time, and where persons claiming land to file their claim.	2823 When lands are taken for public use.
2818 Proceedings in case of adverse claimants.	2824 Disposition of unclaimed land.
2819 Duty of the court; appeal given in case of adverse claimants.	2825 Application of fund arising from sale of land.
2820 Change of venue.	2826 Fees.
	2827 Amendment extending time.

Duty of mayor
or judge of
probate under
act of Con-
gress.
Feb. 17, 1869.

§ 2815. (1166) When the corporate authorities of any town or city, or the probate judge of any county in this Territory (who for the purpose of this act and of receiving and executing the trust declared by the act of Congress hereinafter mentioned), shall be deemed and is hereby designated as the judge of the county court for such county, in which any town or city may be situated shall have entered at the proper land office, the land or any part of the land settled and

occupied as the site of such town, pursuant to and by virtue of the provisions of the act of Congress, entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2d, 1867, and any amendments that may be made thereto, it shall be the duty of such corporate authorities or judge (as the case may be), and they are hereby directed and required to dispose of and convey the title to such land, or to the several blocks, lots, parcels or shares thereof, to the persons entitled thereto, to be ascertained as hereinafter prescribed. Deeds of conveyance for the same shall be executed by the mayor of the city or town under the seal of the corporation; when the entries shall be made by the corporate authorities of such city or town, and by the judge of probate when the entry shall be made by such judge, and in all cases said deeds shall be acknowledged before and certified by an officer competent under the laws of this Territory to take acknowledgments of deeds of conveyance of real estate.

§ 2816. (1167) That within thirty days after the entry of any such lands, the corporate authorities, or judge entering the same, shall give public notice of such entry in at least five public places within such town or city, and by publishing such notice in some newspaper printed and published in this Territory, having a general circulation in such town or city. Said notice shall be published once in each week for at least three successive months, and shall contain an accurate description of the lands so entered as stated in the certificate of entry or duplicate receipt received from the officer of the land office.

Public notice
to be given
after entry.

§ 2817. (1168) That each and every person, or association, or company of persons, or corporation claiming to be the rightful owner of possession, occupant or occupants, or to be entitled to the occupancy or possession of such lands, or to any lot, block, share or parcel thereof, shall, within six months after the first publication of such notice, in person, or by his, her or their agent or attorney, sign a statement in writing, containing an accurate description of the particular parcel or parts of land in which he, she, or they claim to have an interest, and the specific right, interest, or estate therein, which he, she, or they claim to be entitled to receive, and deliver the same to the clerk of the probate court of the county in which such town or city is situated, and the clerk

Within what
time and
where persons
claiming land
claim.
to file their

of said court shall enter such statement in a book to be kept for that purpose, and file and preserve the same in his office, noting the day of filing. The filing of which statement shall be considered notice to all persons claiming any interest in the lands described therein, of the claim of the party filing the same; and all persons failing to make and deliver such statement within the time limited in this section shall be forever barred the right of claiming or recovering such land, or any interest or estate therein, or in any part, parcel or share thereof, in any court of law or equity: *Provided*, That when good cause is shown why such statement could not be filed within the time herein specified, the judge may extend the time not exceeding one year from the first publication of said notice.

Proceedings in
case of ad-
verse claim-
ants.
Feb. 17, 1869.

§ 2818. ⁽¹¹⁶⁹⁾ That if at the expiration of six months after the first publication of the notice as aforesaid, it shall be found by the statement filed that there are adverse claimants to any tract or parcel of land, it shall be the duty of the judge of probate to cause notice to be served upon said claimants, or their agents or attorneys (taking up each case in the order filing), to appear before the probate court of the county in which such tract or parcel of land may be situated, and prosecute their claim upon a day to be appointed by said court, not less than five nor more than thirty days from the service of such notice; the statement filed as aforesaid shall stand in said court in the place of pleadings, and an issue be made thereon; and on the day set for the hearing the judge shall proceed to hear the proof adduced and the allegations of the parties, and decide according to the justice of the case. The court shall cause full minutes of the testimony to be kept, which shall be preserved with the papers in the case and be entered upon the records of said court, with the decision at length. If either party shall feel aggrieved at the decision of said court, he, she or they shall have the right of appeal to the district court, as in other cases, and upon the perfection of such appeal, the court shall cause the testimony and written proofs adduced, together with the statements of the parties and the judgment of the court, to be certified to the district court, to be there tried anew without pleadings, except as above provided.

Duty of the
court.

§ 2819. ⁽¹¹⁷⁰⁾ That after the expiration of the six months provided in section 3 of this act, for filing state-

ments in cases where there are no adverse claimants, the court shall cause a summons to be issued and served upon the party filing such statement, or his, her, or their agent, requiring him, her, or them, or their agent or attorney, to appear before said court upon a day designated, not less than three nor more than ten days from service of such summons, and to make proofs in support of such statement, full minutes of which shall be kept; and the court, if satisfied from the proofs of the validity of such claim, shall cause judgment to be entered of record, and the minutes of the proof to be preserved as required in section 4 of this act; and thereupon shall certify the fact to the mayor of the city or town in cases where the corporate authorities shall have made the entry, who shall make to the party claimant a deed of conveyance for the tract or parcel of land so adjudged him, her or them. If the court shall decide against the validity of such claim, the decision shall in like manner be entered of record and the minutes of testimony preserved; and in all cases appeals and writs of error shall be allowed from the decision of such court, to any party in interest as in other cases. In cases where the entry shall have been made by the probate judge, the conveyance shall be made by him in accordance with the judgment entered as aforesaid; each case shall be taken up by the court in the order in which the statements have been filed. If the judge of probate shall be a claimant of lands in any city or town in his county, he may file the statement required in section 3 of this act, in the probate court of an adjoining county, who shall cause notices thereof to be given to all adverse claimants, if any, and to the mayor of such city or town, and in cases of unincorporated towns, to the justice of the peace of the precinct in which such town may be situated; and the probate court of such adjoining county, shall proceed in the examination and decision of the case as provided in this act as in other cases, and upon the certificate of said court, a deed to the lands shall be made to the party or parties entitled thereto, as provided in this section; *Provided*, That if there shall be an adverse claimant or claimants to any tract so claimed by any judge of probate, and a statement shall have been filed as required in section 3 of this act, the probate court shall cause the same to be certified to the probate court of the county selected to hear and determine such case. A copy of the final judgment appealed

Feb. 17, 1869

Appeal given
in case of ad-
verse claim-
ants.

under this act shall authorize the mayor or judge to make conveyance as hereinbefore provided as in other cases, or withhold it according to such judgment. In cases where the judge of probate, who shall hold the lands in trust, is a party claimant to any portion thereof, and the final judgment of the proper tribunal shall be in his favor, such decision shall operate to discharge the trust in the portion of land so assigned to him. If the mayor of any city or town shall be a claimant of any lands in such city or town, the recorder of such city shall, upon the certificate of the probate court made as in case of other claimants, execute a deed of conveyance to such mayor for the lands finally adjudged to him by the court, under the same rules and regulations as prescribed in other cases.

Change of
Venue.

§ 2820. ⁽¹¹⁷⁾ That a change of venue as in suits at law shall be allowed in all cases arising under this act.

Authorities to
trust state-
ments.
Feb. 17, 1869.

§ 2821. ⁽¹¹⁸⁾ That within thirty days after the expiration of the six months prescribed in section 3, for filing statements, the corporate authorities or judge holding the title to the lands described in the notice published, as required in section 2, shall make a statement in writing containing a true account of all moneys by them or him expended in the acquisition of the title and the administration or execution of the trust to that time, including the money paid by them or him for the purchase of said lands, all necessary traveling expenses, all moneys paid for publishing or posting notices, and for all other necessary and proper expenses incident to such trust to that time, which statement shall be filed in the office of the clerk of the probate court of the county in which such town or city may be situated, and shall be open for inspection by all persons interested, during ordinary business hours.

Proportionate
pay or tender
must be made
before deed
can be de-
manded.

§ 2822. ⁽¹¹⁹⁾ That before the corporate authorities or judge holding any such lands in trust as aforesaid, shall be required to execute, acknowledge or deliver any deed of conveyance thereof, as hereinbefore provided, to any person or persons claiming and adjudged to be entitled to such deed, such person or persons shall pay or tender to the mayor or judge, as the case may be, the sum of money chargeable on the part thereof to be conveyed by such deed to be ascertained by taking the whole amount of the cost of the land of which it is a part, and expenses stated in the account as pre-

scribed in section 7, in the proportion which the area of such lot shall bear to the whole amount of land entered after deducting the area of all streets, alleys and public grounds in such city or town and the reasonable charges for repairing, executing and acknowledging such deed, including the interest on the money expended; *Provided*, Errors in measurement or computation shall not invalidate any proceedings under this act; *Provided further*, That full payment for said land, so adjudged to belong to said claimant, shall be made to the probate judge or mayor, as the case may be, within six months after the said certificate herein provided for, is issued to said claimant; *Provided further*, That in case of non-payment by the claimant within the time herein specified, the amount so due shall be deemed a judgment lien upon said land, and the said judge or mayor, as the case may be, shall proceed to sell by sheriff's sale, said land in the same manner as land sold under execution, subject, however, to redemption as provided in Title VII., Chapter I., of the Compiled Laws of Utah.

Payments to
land, when to
be made, etc.
Feb. 20, 1880.

§ 2823. (1174) That whenever the title to such lands shall be held by the corporate authorities of any town or city, all lands designated for public use by such corporate authorities as streets, lanes, avenues, alleys, parks, commons and public grounds, shall vest in and be held by the corporation absolutely, and shall not be claimed adversely by any person or persons whatsoever; and the judge of probate who shall have entered any lands in trust for any town or city which may afterwards become incorporated, shall, under the same conditions, convey by deed to the corporation thereof the lands designated for the use of the public as aforesaid; that in the case of death or disability of the judge of probate or mayor who may have entered the lands in trust for any town or city under the law of Congress, as aforesaid, before the complete execution of such trust, the same shall vest in his successor in office, who shall proceed with the execution of the same in the same manner, and under the same conditions imposed by this act upon the judge or mayor receiving the trust in the first instance.

When lands
are taken for
public use.
Feb. 17, 1869.

§ 2824. s 10. If there shall remain any unclaimed lands within such city or town, after the expiration of six months from the publication of the notice provided in section 3, the municipal authority in cases where the lands have been entered for a municipal corporation; and the probate

March 5, 1888.

judge, in cases where the lands have been entered in trust by him, shall cause the same to be surveyed and laid out into suitable and convenient blocks, lots and alleys, and shall reserve such portions as may be deemed necessary for public squares, parks, school houses, hospitals, asylums, fire engines and hose houses, pest houses, Territorial or other public buildings or other necessary public use, and shall cause all necessary streets, roads, lanes and alleys, to be laid out through the same, and a plot of the same, properly certified to, be filed for record in the office of the county recorder of the proper county; and may sell at public auction to the highest bidder for cash, after public notice of the time and place of such sale, published at least forty days in some newspaper published in the county, if there be such, otherwise in a newspaper having general circulation in the county, such lots or blocks so laid out. If any of such lands remain unsold for want of a bidder at such auction, at the end of three months thereafter, the corporate authorities or probate judge, as aforesaid, shall have power to sell such residue of lands at public or private sale, on such terms as they may deem for the best interest of the city or town; and they shall execute deeds, as in this act provided, to the several purchasers for the lands so sold; but none of such lands shall be sold for less than five dollars per acre, either at private or public sale.

March 5, 1888.
Application of
proceeds of
lands.

§ 2825, s 11. That all moneys arising from the sales of lands as provided in the next preceding section, after deducting the costs and charges of such sales, shall be paid into the city treasury in cases where such lands have been entered in trust by corporate authority, or in the county treasury in cases where such lands have been entered in trust by the probate judge, and the same shall be set apart and applied to the improvement of public squares, and streets, the construction of sewers and procuring a supply of water for the use and benefit of the inhabitants of the city or town in which such lands are situate.

Fees

§ 2826. ⁽¹¹⁷⁾ That the several officers hereinafter mentioned, may charge and collect the following fees for their services under this act, viz: The judge of probate for hearing proofs and giving judgment in each contested case, one dollar and fifty cents; in each case where there is no contest, one dollar; for preparing and executing each deed, fifty cents,

exclusive of revenue stamps; for each certificate amounting a copy of the record of the decision of the court, twenty-five cents. The clerk of the probate court for each summons or subpoena, twenty-five cents; for filing each statement and entering the same, two cents; stating each witness, five cents; for certificate and seal to each certificate of title, twenty-five cents; for each certificate of acknowledgment of deed, with seal, twenty-five cents. The mayor of the city for preparing and executing each deed of conveyance, fifty cents, exclusive of revenue stamps; the sheriff or constable for serving process of summons or subpoena, twenty-five cents; for each mile actually traveled in serving process, ten cents.

§ 2827. ¹⁸⁸⁰ *Witnesses.* It is made to appear that many persons and rightful claimants as enumerated in the aforesaid act of the seventeenth of February, 1880, have failed to present their application for lots or parcels of land within the time limited in said act; and

Witnesses, Great injustice may result to claimants unless a remedy be provided for such cases; therefore

Be it enacted: That any claimant of any lot, block or parcel of land in any town or city, as defined in said act of the Territory of Utah, to which this is amendatory, to-wit, the act referred to in the title hereof, and the act of Congress approved March 2d, 1867, who shall have failed or neglected to make application for said lot, block or parcel within the time therein provided, may at any time within six months after the approval of this act, make and file the application provided for in said act, and the same shall be heard and determined in the same manner, and with like effect as if made within the time prescribed in said original act; *Provided*, That in no case shall such application be received or entertained by the probate court, if it appear that the lot or block or parcel shall have been theretofore adjudged or decreed to any prior claimant by said court; *Provided further*, That nothing in this act shall be so construed as to enlarge or extend the rights of parties in contested cases now in process of adjudication.

PART SEVENTH.

PARTICULAR CONTRACTS AND LIENS.

CHAPTER I.

STATUTE OF FRAUDS.

SECTION.	SECTION.
2828 Persons knowingly a party to wrongful conveyance, etc., guilty of fraud.	2835 Certain contracts to be void unless in writing.
2829 Obtaining property by means of false pretenses.	2836 Contracts for the sale of goods exceeding three hundred dollars
2830 Liable in damages.	2837 When sale, etc., to be presumed fraudulent, unless followed by change of possession.
2831 Requisites to convey certain interests in lands.	2838 Conveyance to hinder or defraud creditors.
2832 Qualification of last section.	2839 Certain conveyances, etc., void as against heirs, etc.
2833 Conveyance with intent to defraud.	2840 Instruments may be signed by agent.
2834 Deeds of gift, etc., for use of persons making, void as to creditors.	

Persons
knowingly a
party to
wrongful con-
veyance, etc.,
guilty of fraud.
Jan. 20, 1865.

§ 2828. (1865.) Any person in any manner knowingly a party to wrongfully conveying any land or land claim or improvement thereon, any bond, execution or any other description of property, with intent to deceive or defraud, or to delay or defeat the payment of just debts, or who shall sell or exchange any description of property which he at the time knows is adulterated, damaged or diseased, without first truly informing the purchaser concerning the actual condition or quality of said property, shall be deemed guilty of fraud, and shall, on conviction thereof, be fined not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding one year, at daily hard labor, during customary hours, upon the streets, highways and public works and buildings of the county; *Provided*, Such labor shall be performed with a ball and chain attached to a prisoner whenever the jailor deems it necessary; or both fine and imprisonment as aforesaid.

§ 2829. ⁽¹⁰⁰⁷⁾ Any person, knowingly obtaining any prop- obtaining property by means of false pretenses
erty through any false pretense or representation made by
himself or at his instigation, shall be deemed a cheat or
swindler, and shall, on conviction thereof, be fined or im-
prisoned, or both, as provided in the foregoing section for the
punishment of fraud.

§ 2830. ⁽¹⁰⁰⁸⁾ Any person convicted under this act shall liable in damages
also be liable to make full restitution and pay all damages to
the party aggrieved.

§ 2831. ⁽¹⁰⁰⁹⁾ That no estate or interest in lands, other Feb. 18, 1870.
Requires to contract con-
vey interests in lands.
than leases for a term not exceeding one year, nor any trust
or power over or concerning lands, or in any manner relating
thereto, shall hereafter be created, granted, assigned, surren-
dered or declared, unless by act or operation of law, or by deed
or conveyance in writing, subscribed by the party creating,
granting, assigning, surrendering or declaring the same, or by
his lawful agent thereunto authorized by writing.

§ 2832. ⁽¹⁰¹⁰⁾ The foregoing provision shall not be con- Qualification
of last section.
strued to affect the power of a testator in the disposition of
his real estate by the last will and testament: nor to prevent
any trust from arising or being extinguished by implication or
operation of law; nor to abridge the powers of courts to
compel the specific performance of agreements in case of past
performance thereof.

§ 2833. ⁽¹⁰¹²⁾ Every conveyance of any estate or interest Conveyance
with intent to defraud.
in lands, or the rents or profits of lands, and every charge
upon lands, or the rents or profits thereof made or created
with intent to defraud prior or subsequent purchasers thereof,
for a valuable consideration, shall be void as against such
purchasers.

§ 2834. ⁽¹⁰¹³⁾ All deeds or gifts, all conveyances, trans- Deeds of gift,
for use of per-
sons making,
void as to
creditors.
fers or assignments, verbal or written, of goods, chattels or
things in action, made in trust for the use of the person
making the same, shall be void as against the creditors exist-
ing or subsequent of such person.

§ 2835. ⁽¹⁰¹⁴⁾ In the following cases every agreement Certain con-
tracts to be
void unless in
writing.
shall be void, unless such agreement or some note or memo-
randum thereof, expressing the consideration be in writing
and subscribed by the party, to be charged therewith.

1. Every agreement that by its terms is not to be
performed within one year from the making thereof.

2. Every promise to answer for the debt, or default or
miscarriage of another.

3. Every agreement, promise or undertaking, made upon consideration of marriage, except mutual promises to marry.

Contracts for the sale of goods exceeding three hundred dollars.

§ 2836. ⁽¹⁴⁵⁾ Every contract for the sale of any goods, chattels, or things in action for the price of three hundred dollars, or over, shall be void, unless:

1. A note or memorandum of such contract be made in writing and subscribed by the parties to be charged therewith.

2. Unless the buyer shall accept or receive part of such goods, or the evidences, or some of them, of such things in action; or

3. Unless the buyer shall at the time pay some part of the purchase money.

When sale, etc., to be presumed fraudulent, unless followed by change of possession.
Feb. 19, 1876.

§ 2837. ⁽¹⁴⁶⁾ Every sale made by a vendor of goods or chattels in his possession or under his control, and every assignment of goods and chattels, unless the same be accompanied by a delivery within a reasonable time, and be followed by an actual and continued change of the possession of the things sold or assigned, shall be conclusive evidence of fraud as against the creditors of the vendor, or assignor, or subsequent purchasers in good faith. The word "creditors," as used in this section, shall be construed to include all persons who shall be creditors of the vendor, or assignor, at any time while such goods and chattels shall remain in his possession or under his control.

Conveyances to hinder or defraud creditors.

§ 2838. ⁽¹⁴⁷⁾ Every conveyance or assignment in writing or otherwise of any estate or interest in lands, or in goods, or things in action, or of rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents or profits thereof, made with the intent to delay, hinder, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts, or demands, and every bond or other evidence of debt given, suits commenced, decree or judgment suffered with the like intent, as against the person hindered, delayed or defrauded, shall be void.

Certain conveyances, etc., void against heirs, etc.

§ 2839. ⁽¹⁴⁸⁾ Every conveyance, charge, instrument or proceeding declared to be void by the provisions of this act, as against creditors and purchasers, shall be equally void as against the heirs, successors, personal representatives or assigns of such creditors or purchasers.

Instruments may be signed by agent.

§ 2840. ⁽¹⁴⁹⁾ Every instrument required by the provisions of this act to be subscribed by any party, may be subscribed by the lawful agent of such party.

CHAPTER II.

NEGOTIABLE INSTRUMENTS.

(ACT) CHAPTER I.

ARTICLE FIRST.

GENERAL DEFINITION.

SECTION.

2841 Negotiable instrument.

2842 Must be for unconditional payment of money.

2843 Payee must be ascertainable at date of instrument.

2844 May be in alternative.

2845 Date.

SECTION.

2846 May contain a pledge, etc.

2847 Must not contain any other contract.

2848 When post dated, death of maker before such date does not affect.

2849 Six classes of negotiable instruments.

§ 2841. s 1. A negotiable instrument is a written promise or request for the payment of a certain sum of money to order or bearer, in conformity to the provisions of this act.

March 1, 1882
Negotiable
instrument.
What.

§ 2842. s 2. A negotiable instrument must be made payable in money only, and without any condition not certain of fulfilment.

Must be for
unconditional
payment of
money.

§ 2843. s 3. The person to whose order a negotiable instrument is made payable must be ascertainable at the time the instrument is made.

§ 2844. s 4. A negotiable instrument may give to the payee an option between the payment of the sum specified therein and the performance of another act; but as to the latter, the instrument is not within the provisions of this act.

Instrument
may be made
alternative

§ 2845. s 5. A negotiable instrument may be with or without date, and with or without designation of time or place of payment.

Date, etc.

§ 2846. s 6. A negotiable instrument may contain a pledge of collateral security, with authority to dispose thereof.

May contain a
pledge, etc.

- What it must not contain. § 2847. s 7. A negotiable instrument must not contain any other contract than such as is specified in this article.
- Date. § 2848. s 8. Any date may be inserted by the maker of a negotiable instrument, whether past, present or future, and the instrument is not invalidated by his death or incapacity at the time of the nominal date.
- Different classes of instruments § 2849. s 9. There are six classes of negotiable instruments, namely: 1st, bills of exchange: 2d, promissory notes: 3d, bank notes: 4th, checks: 5th, bonds: 6th, certificates of deposit.

ARTICLE SECOND.

INTERPRETATION OF NEGOTIABLE INSTRUMENTS.

- | | SECTION. | SECTION. |
|---|---|--|
| | 2850 When payable, if without date. | 2853 Unindorsed instrument, etc., when negotiable. |
| | 2851 Where payable, if without a place of payment. | 2854 Effect of being payable to fictitious person. |
| | 2852 Negotiable words, effect prescribed. | 2855 Presumption of consideration. |
| Time and place of payment. | § 2850. s 10. A negotiable instrument which does not specify the time of payment is payable immediately. | |
| Place of payment not specified. | § 2851. s 11. A negotiable instrument which does not specify a place of payment is payable at the residence or place of business of the maker, or wherever he may be found. | |
| Instruments payable to a person or his order, how construed | § 2852. s 12. An instrument, otherwise negotiable in form, payable to a person named, but with the words added, "or to his order," or, "to bearer," or words equivalent thereto, is in the former case payable to the written order of such person, and in the latter case payable to the bearer. | |
| Unindorsed note, when negotiable. | § 2853. s 13. A negotiable instrument, made payable to the order of the maker, or a fictitious person, if issued by the maker for a valid consideration, without indorsement, has the same effect against him and all other persons having notice of the fact, as if payable to the bearer. | |
| Fictitious payee. | § 2854. s 14. A negotiable instrument, made payable to the order of a person obviously fictitious, is payable to the bearer. | |
| Presumption of consideration. | § 2855. s 15. The signature of every drawer, acceptor and indorser of a negotiable instrument is presumed to have been made for a valuable consideration, before the maturity of the instrument, and in the ordinary course of business. | |

ARTICLE THIRD.

INDORSEMENTS.

SECTION.	SECTION.
2856 Definition.	2865 When indorsed liable to payee.
2857 Agreement to indorse	2866 Indorsement without recourse.
2858 When indorsement may be made on indorsed paper.	2867 Limited effect of "without recourse" in indorsement.
2859 May be general or special.	2868 Rights of indorsed against prior parties.
2860 General indorsement.	2869 Want of consideration as to indorser.
2861 Special indorsement.	2870 Indorse in due course.
2862 General, how made special.	2871 His rights.
2863 How negotiability destroyed.	2872 Instruments partly in blank.
2864 Warrantees implied from indorsement.	

§ 2856. s 16. One who writes his name upon a negotiable instrument, otherwise than as a maker or acceptor, and delivers it, with his name thereon, to another person, is called an indorser, and his act is called indorsement.

§ 2857. s 17. One who agrees to indorse a negotiable instrument is bound to write his signature upon the back of the instrument, if there is sufficient space thereon for that purpose.

§ 2858. s 18. When there is not room for signature upon the back of a negotiable instrument, a signature equivalent to an indorsement thereof may be made upon a paper annexed thereto.

§ 2859. s 19. An indorsement may be general or special.

§ 2860. s 20. A general indorsement is one by which no indorsee is named.

§ 2861. s 21. A special indorsement specifies the indorsee.

§ 2862. s 22. A negotiable instrument bearing a general indorsement cannot be afterwards specially indorsed; but any lawful holder may turn a general indorsement into a special one, by writing above it a direction for payment to a particular person.

§ 2863. s 23. A special indorsement may, by express words for that purpose, but not otherwise, be so made as to render the instrument not negotiable.

§ 2864. s 24. Every indorser of a negotiable instrument, unless his indorsement is qualified, warrants to every subsequent holder thereof, who is not liable thereon to him:

1. That it is in all respects what it purports to be.

2. That he has a good title to it.

3. That the signature of all prior parties are binding upon them.

4. That if the instrument is dishonored, the indorser will, upon notice thereof duly given to him, or without notice where it is excused by law, pay the same with interest, unless exonerated under the provisions of sections 71, 109 and 111.

Indorser,
when liable to
payee.

§ 2865. s 25. One who indorses a negotiable instrument before it is delivered to the payee, is liable to the payee thereon as an indorser.

March 9, 1882.
Indorsement
without
recourse.

§ 2866. s 26. An indorser may qualify his indorsement with the words, "without recourse," or equivalent words; and upon such indorsement, he is responsible only to the same extent as in the case of a transfer without indorsement.

Same.

§ 2867. s 27. Except as otherwise prescribed by the last section, an indorsement without recourse has the same effect as any other indorsement.

Indorsee prior
to contract.

§ 2868. s 28. An indorsee of a negotiable instrument has the same rights against every prior party thereto that he would have had if the contract had been made directly between them in the first instance.

Effect of want
of considera-
tion.

§ 2869. s 29. The want of a consideration for the undertaking of a maker, acceptor or indorser of a negotiable instrument does not exonerate him from liability thereon to an indorsee in good faith for a consideration.

Indorsee in
due course,
what.

§ 2870. s 30. An indorsee in due course is one who, in good faith, in the ordinary course of business, and for value, before its apparent maturity or presumptive dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument, duly indorsed to him, or indorsed generally, or payable to the bearer.

Rights of in-
dorsee in due
course.

§ 2871. s 31. An indorsee of a negotiable instrument, in due course, acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable, and notwithstanding any defect in the title of the person from whom he acquired it.

Instruments
left blank.

§ 2872. s 32. One who makes himself a party to an instrument intended to be negotiable, but which is left partly in blank for the purpose of filing afterwards, is liable upon the instrument to an indorsee thereof in due course, in whatever manner and at whatever time it may be filed, so long as it remains negotiable in form.

ARTICLE FOURTH.

PRESENTMENT FOR PAYMENT.

SECTION.

2873 Effect of no demand of principal debtor.
 2874 Presentment how made.
 2875 When instrument matures.
 2876 Presumed dishonor of sight bill.
 2877 Apparent maturity of sight bill or demand bill.

SECTION.

2878 Apparent maturity of sight or demand note.
 2879 When payable a certain time after sight or demand.
 2880 What a party may require as a concurrent condition to payment.

§ 2873. s 33. It is not necessary to make a demand of payment upon the principal debtor in a negotiable instrument in order to charge to him, but if the instrument is by its terms payable at a specified place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to an offer of payment upon his part.

Effect of want of demand on principal debtor.
 March 9, 1882.

§ 2874. s 34. Presentment of a negotiable instrument for payment, when necessary, must be made as follows, as nearly as by reasonable diligence is practicable.

March 9, 1882.
 Presentment, how made

1. The instrument must be presented by the holder.
2. The instrument must be presented to the principal debtor, if he can be found at the place where presentment should be made, and if not, then it must be presented to some other person having charge thereof or employed therein, if one can be found there.

3. An instrument which specifies a place for its payment must be presented there, and if the place specified includes more than one house, then at the place of residence or business of the principal debtor if it can be found therein.

4. An instrument which does not specify a place for its payment must be presented at the place of residence or business of the principal debtor, or wherever he may be found, at the option of the presenter.

5. The instrument must be presented upon the day of its maturity, or, if it be payable on demand, it may be presented upon any day; it must be presented within reasonable hours, and if it be payable at a banking house, within the usual banking hours of the vicinity, but, by the consent of

the person to whom it should be presented, it may be presented at any hour of the day.

6. If the principal debtor have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for payment is excused.

Apparent
maturity,
when.

§ 2875. s 35. The apparent maturity of a negotiable instrument payable at a particular time, is the day on which by its terms it becomes due, or when that is a holiday, the next preceding business day, except when such preceding day is also a holiday: in the latter event such instrument shall become due on the next succeeding business day.

Presumptive
dishonor of
bill, payable
after sight.

§ 2876. s 36. A bill of exchange, payable at a certain time after sight, which is not accepted within ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance, is presumed to have been dishonored.

Apparent ma-
turity of bill,
payable at
sight.

§ 2877. s 37. The apparent maturity of a bill of exchange, payable at sight or on demand, is, 1st, If it bears interest, one year after its date; or, 2d, If it does not bear interest, ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance.

Apparent ma-
turity of note.

§ 2878. s 38. The apparent maturity of a promissory note, payable at sight or on demand is, 1st, If it bears interest, one year after its date; or, 2d, If it does not bear interest, six months after its date.

Same.

§ 2879. s 39. When a promissory note is payable at a certain time after sight or demand, such time is to be added to the periods mentioned in the preceding section.

Surrender of
instrument,
when condi-
tion of pay-
ment.

§ 2880. s 40. A party to a negotiable instrument may require, as a condition concurrent to its payment by him, 1st, That the instrument be surrendered to him, unless it is lost or destroyed, or the holder has other claims upon it; or, 2d, If the holder has a right to retain the instrument and does retain it, then that a receipt for the amount paid or an exoneration of the party paying be written thereon; or, 3d, If the instrument is lost or destroyed, then that the holder give to him a bond, executed by himself and two sufficient sureties, to indemnify him against any lawful claim thereon.

ARTICLE FIFTH.

DISHONOR OF NEGOTIABLE INSTRUMENT.

SECTION.

- 2881 Definition.
 2882 Notice, by whom.
 2883 Form of notice.
 2884 How served.
 2885 How served, after indorser's death.
 2886 When valid, given after death.

SECTION.

- 2887 How given, otherwise than by mail.
 2888 How given by mail.
 2889 How given by agent.
 2890 Time, to each indorser for giving notice.
 2891 Effect of notice of dishonor.

§ 2881. s 41. A negotiable instrument is dishonored Dishonor, when. when it is either not paid or not accepted, according to its tenor, on presentment for that purpose, or without presentment where that is excused.

§ 2882. s 42. Notice of the dishonor of a negotiable instrument may be given. Notice, by whom given, March 9, 1882.

1. By a holder thereof; or,

2. By any party to the instrument who might be compelled to pay it to the holder, and who would, upon taking it up, have a right to reimbursement from the party to whom the notice is given.

§ 2883. s 43. A notice of dishonor may be given in any form which describes the instrument with reasonable certainty, and substantiantially informs the party receiving it that the instrument has been dishonored. Form of notice.

§ 2884. s 44. A notice of dishonor may be given. Notice, how served.

1. By delivering it to the party to be charged, personally, at any place.

2. By delivering it to some person of discretion at the place of residence or business of such party apparently acting for him; or,

3. By properly folding the notice, directing it to the party to be charged, at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the post office most conveniently accessible from the place where the presentment was made and paying the postage thereon.

Notice, how
served after
indorser's
death.

§ 2885. s 45. In case of the death of a party to whom the notice of dishonor should otherwise be given, the notice must be given to one of his personal representatives; or if there are none, then to any member of his family who resides with him at his death; or if there is none, then it must be mailed to his last place of residence, as prescribed by subdivision 3 of last section.

When notice
given after
death is valid.

§ 2886. s 46. A notice of dishonor sent to a party after his death, but in ignorance thereof, and in good faith, is valid.

Notice, when
to be given.

§ 2887. s 47. Notice of dishonor, when given by the holder of an instrument or his agent, otherwise than by mail, must be given on the day of dishonor, or on the next business day thereafter.

Notice of dis-
honor, when to
be mailed.

§ 2888. s 48. When notice of dishonor is given by mail, it must be deposited in the post office in time for the first mail which closes afternoon of the first business day succeeding the dishonor, and which leaves the place where the instrument was dishonored for the place to which the notice should be sent.

Notice, how
given by agent.

§ 2889. s 49. When the holder of a negotiable instrument, at the time of its dishonor, is a mere agent for the owner, it is sufficient for him to give notice to his principal in the same manner as to an indorser, and its principal may give notice to any other party to be charged, as if he were himself an indorser. And if an agent of the owner employs a sub-agent, it is sufficient for each successive agent or sub-agent to give notice in like manner to his own principal.

March 9, 1882
Additional
time for
notice by
indorser

§ 2890. s 50. Every party to a negotiable instrument, receiving notice of its dishonor, has the like time thereafter to give similar notice to prior parties as the original holder had after its dishonor, but this additional time is available only to the particular party entitled thereto.

Effect of notice
of dishonor

§ 2891. s 51. A notice of the dishonor of a negotiable instrument, if valid, in favor of the party giving it, inures to the benefit of all other parties thereto whose right to give the like notice has not then been lost.

ARTICLE SIXTH.

EXCUSE OF PRESENTMENT AND NOTICE.

SECTION.

2892 When notice excused.

2893 When presentment and notice excused.

2894 Receipt of full security excuses presentment and notice.

SECTION.

2895 Delay when excused.

2896 Waiver of presentment and notice.

2897 Waiver of protest.

§ 2892. s 52. Notice of dishonor is excused: 1st, when the party by whom it should be given cannot, with reasonable diligence, ascertain either the place of residence or business of the party to be charged; or, 2d, when there is no post office communication between the town of the party by whom the notice should be given, and the town in which the place of residence or business of the party to be charged is situated; or, 3d, when the party to be charged is the same person who dishonors the instrument; or, 4th, when the notice is waived by the party entitled thereto.

Notice of
dishonor,
when excused

§ 2893. s 53. Presentment and notice are excused as to any party to a negotiable instrument, who informs the holder, within ten days before its maturity, that it will be dishonored.

Presentment
and notice,
when excused

§ 2894. s 54. If before or after the maturity of an instrument an endorser has received full security for the amount thereof, or the maker has assigned all his estate to him as such security, presentment and notice to him are excused.

Same

§ 2895. s 55. Delay in presentment, or in giving notice of dishonor, is excused when caused by circumstances which the party delaying could not have avoided by the exercise of reasonable care and diligence.

Delay, when
excused
March 9, 1882

§ 2896. s 56. A waiver of presentment waives notice of dishonor also; unless the contrary is expressly stipulated; but a waiver of notice does not waive presentment.

Waiver of
presentment
and notice

§ 2897. s 57. A waiver of protest on any negotiable instrument other than a foreign bill of exchange waives presentment and notice.

Waiver of
protest

ARTICLE SEVENTH.

EXTINCTION OF NEGOTIABLE INSTRUMENTS.

SECTION.

2898 Obligation of party how extinguished.

Obligation of
party, when
extinguished

§ 2898. s 58. The obligation of a party to a negotiable instrument is extinguished: 1st, in like manner with that of parties to contracts in general; or, 2d, by payment of the amount due upon the instrument at or after its maturity, in good faith and in the ordinary course of business to any person having actual possession thereof and entitled by its terms payment.

(ACT) CHAPTER II.

BILLS OF EXCHANGE.

ARTICLE FIRST.

FORM AND INTERPRETATION OF A BILL.

SECTION.

2899 What is a bill of exchange.

2900 Drawee additional in case of need.

2901 Bill in parts.

2902 When it must be in a set.

SECTION.

2903 Presentment of part of a set.

2904 Bill where payable.

2905 Rights and obligations of a drawer.

§ 2899. s 59. A bill of exchange is an instrument ^{Bill of exchange, what} negotiable in form, by which one, who is called the drawer, requests another, called the drawee, to pay a specified sum of money.

§ 2900. s 60. A bill of exchange may give the name of ^{Drawee, in case of need} any person in addition to the drawee, to be resorted to in case of need.

§ 2901. s 61. A bill of exchange may be drawn in any ^{Bill in parts of a set} number of parts, each part stating the existence of the others, and all forming one set.

§ 2902. s 62. An agreement to draw a bill of exchange ^{When must be in a set} binds the drawer to execute it in three parts, if the other party to the agreement desires it.

§ 2903. s 63. Presentment, acceptance or payment of ^{Presentment, etc., of a part of a set} a single part in a set of a bill of exchange is sufficient for the whole.

§ 2904. s 64. A bill of exchange is payable: 1st, at the place where by its terms it is made payable; or, 2d, if it specifies no place of payment, then at the place to which it is addressed; or, 3d, if it be not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found. If the drawee has no place of business, or ^{Bill where payable}

if his place of business or residence cannot with reasonable diligence be ascertained, presentment for payment is excused, and the bill may be protested for non-payment.

Effects, etc., of
drawee.

§ 2905, s 65. The rights and obligations of the drawer of a bill of exchange are the same as those of the first indorser of any negotiable instrument.

ARTICLE SECOND.

DAYS OF GRACE.

SECTION.

2906 No days of grace.

Days of grace.

§ 2906, s 66. Days of grace are not allowed.

ARTICLE THIRD.

PRESENTMENT FOR ACCEPTANCE

SECTION.

2907 When bill may be presented.

2908 For acceptance, how presentment made.

2909 Presentment to joint drawees.

SECTION.

2910 Must be presented to drawee in case of need, when one is specified before it can be treated as dishonor.

2911 When presentment for acceptance must be made.

When bill may
be presented

§ 2907, s 67. At any time before a bill of exchange is payable, the holder may present it to the drawee for acceptance, and if acceptance is refused the bill is dishonored.

Presentment
for acceptance, how
made

§ 2908, s 68. Presentment for acceptance must be made in the following manner, as nearly as by reasonable diligence it is practicable:

1. The bill must be presented by the holder or his agent.

2. It must be presented on a business day and within reasonable hours.

3. It must be presented to the drawee; or if he be absent from his place of residence or business, to some person having charge thereof or employed therein; and,

4. The drawee on such presentment may postpone his acceptance or refusal until the next business day, but if the drawee have no place of business, or if his place of business or residence cannot with reasonable diligence be ascertained, presentment for acceptance is excused and the bill may be protested for non-acceptance.

§ 2909, s 69. Presentment for acceptance to one of the several joint drawees and refused by him, dispenses with presentment to the others. Presentment to joint drawees

§ 2910, s 70. A bill of exchange which specifies a drawee in case of need must be presented to him for acceptance or payment, as the case may be, before it can be treated as dishonored. When presentment to be made to drawee in case of need

§ 2911, s 71. When a bill of exchange is payable at a specified time after sight, the drawer and indorsers are exonerated if it is not presented for acceptance within ten days after the time which would suffice, with ordinary diligence, to forward it for acceptance, unless presentment is excused. Presentment when must be made

ARTICLE FOURTH

ACCEPTANCE.

SECTION.

2912 How made.

2913 Holder entitled to as face of bill

2914 What sufficient with holders' consent.

2915 Acceptance by separate instrument.

SECTION.

2916 When promise to accept equivalent to acceptance.

2917 Cancellation of acceptance.

2918 Acceptance, what it admits.

Acceptance,
how made.

§ 2912. s 72. An acceptance of a bill must be made in writing by the drawee, or by an acceptor for honor, and may be made by the acceptor writing his name across the face of the bill, with or without other words.

Holder en-
titled to ac-
ceptance on
face of bill

§ 2913. s 73. The holder of a bill of exchange, if entitled to an acceptance thereof, may treat the bill as dishonored if the drawee refuses to write across its face an unqualified acceptance.

What accept-
ance sufficient
with consent
of holder

§ 2914. s 74. The holder of a bill of exchange may, without prejudice to his rights against prior parties, receive and treat as a sufficient acceptance:

1. An acceptance written upon any part of the bill, or upon a separate paper.

2. An acceptance qualified so far only as to make the bill payable at a particular place within the city or town in which, if the acceptance was unqualified, it would be payable; or,

3. A refusal by the drawee to return the bill to the holder after presentment, in which case the bill is payable immediately without regard to its terms.

Acceptance by
separate
instrument.

§ 2915. s 75. The acceptance of a bill of exchange, by a separate instrument, binds the acceptor to one, who upon the faith thereof, has the bill for value or other good consideration.

Promise to ac-
cept, when
equivalent to
acceptance.
March 9, 1882.

§ 2916. s 76. An unconditional promise, in writing, to accept a bill of exchange, is a sufficient acceptance thereof, in favor of every person who upon the faith thereof has taken the bill for value or other good consideration.

Cancellation of
acceptance
admits.

§ 2917. s 77. The acceptor of a bill of exchange may cancel his acceptance at any time before delivering the bill to

the holder, and before the holder has, with the consent of the acceptor, transferred his title to another person, who has given value for it upon the faith of such acceptance.

§ 2918. s 78. The acceptance of a bill of exchange <sup>What accept-
ance admits.</sup> admits the signature of the drawer, but does not admit the signature of any indorser to be genuine.

ARTICLE FIFTH.

ACCEPTANCE AND PAYMENT FOR HONOR.

SECTION.

2919 When a bill may be so accepted and paid for honor.

2920 Holder must accept payment for honor.

2921 How such acceptance made.

SECTION.

2922 Presentment of bill so accepted for payment.

2923 Notice of dishonor not excused by acceptance for honor.

§ 2919. s 79. On the dishonor of a bill of exchange by the drawee, and in case of a foreign bill, [after it has been duly protested, it may be accepted or paid by any person, for the honor of any party thereto.] <sup>When bill may
be accepted
and paid for
honor.</sup>

§ 2920. s 80. The holder of a bill of exchange, is not bound to allow it to be accepted for honor, but is bound to accept payment for honor. <sup>Holder bill ex-
change must
accept pay-
ment for
honor.</sup>

§ 2921. s 81. An acceptor or payer for honor must write a memorandum upon the bill, stating therein for whose honor he accepts or pays, and must give notice to such parties with reasonable diligence, of the fact of such acceptance or payment. Having done so he is entitled to reimbursement from such parties and from all parties prior to them. <sup>Acceptance
for honor, how
made.</sup>

§ 2922. s 82. A bill of exchange which has been accepted for honor, must be presented at its maturity to the drawee for payment, and notice of its dishonor by him must be given to the acceptor for honor, in like manner as to an indorser; after which the acceptor for honor must pay the bill. ^{How enforced.}

§ 2923. s 83. The acceptance of a bill of exchange for honor does not excuse the holder from giving notice of its dishonor by the drawee. <sup>Notice of dis-
honor, not ex-
cused, when.</sup>

ARTICLE SIXTH.

PRESENTMENT FOR PAYMENT.

SECTION.

SECTION.

- 2924 Presentment for payment, when not accepted.
 2925 When payable at a particular place.
- 2926 Effect of delaying presentment in certain cases.
 2927 Effect in other cases.

Presentment,
when bill not
accepted,
where made.
March 3, 1882

§ 2924. s 84. If a bill of exchange is, by its terms, payable at a particular place, and is not accepted on presentment, it must be presented at the same place for payment, when presentment for payment is necessary.

Presentment
of bill, payable
at particular
place.

§ 2925. s 85. A bill of exchange accepted payable at a particular place, must be presented at that place for payment when presentment for payment is necessary, and need not be presented elsewhere.

Effect of de-
lay in present-
ment, in cer-
tain cases.

§ 2926. s 86. If a bill of exchange, payable at sight or on demand, without interest, is not duly presented for payment within ten days after the time in which it could, with reasonable diligence, be transmitted to the proper place for such presentment, the drawer and indorsers are exonerated, unless such presentment is excused.

Effect in other
cases.

§ 2927. s 87. Mere delays in presenting a bill of exchange, payable with interest, at sight or on demand, does not exonerate any party thereto.

ARTICLE SEVENTH.

EXCUSE OF PRESENTMENT AND NOTICE.

SECTION.

2928 When presentment excused.
2929 Delay when excused.

SECTION.

2930 Presentment and notice when excused.

§ 2928. s 88. The presentment of a bill of exchange for acceptance is excused, if the drawee has not capacity to accept it. Presentment, when excused.

§ 2929. s 89. Delay in the presentment of a bill of exchange for acceptance is excused, when caused by circumstances over which the holder has no control. Delay, when excused.

§ 2930. s 90. Presentment of a bill of exchange for acceptance or payment, and notice of its dishonor, are excused as to the drawer, if he forbids the drawee to accept, or the acceptor pay the bill, or if, at the time of drawing, he had no reason to believe that the drawee would accept or pay the same. Presentment and notice, when excused.

ARTICLE EIGHTH.

FOREIGN BILLS.

SECTION.

2931 Definitions.
2932 Protest necessary.
2933 By whom to be made.
2934 How made.
2935 Where to be made.
2936 When.
2937 When excused.
2938 Notice of protest how given.
2939 Waiver of.

SECTION.

2940 Declaration before payment for honor.
2941 Damages on dishonor.
2942 Rate of damages.
2943 Interest.
2944 Damages, when estimated without regard to rate of exchange.
2945 When expressed in foreign money.

§ 2931. s 91. An inland bill of exchange is one drawn and payable within this Territory; all others are foreign. Definitions

§ 2932. s 92. Notice of dishonor of a foreign bill of exchange can be given only by notice of its protest. Protest necessary.
March 9, 1882.

Protest, by
whom made.

§ 2933. s 93. Protest must be made by a notary public, if with reasonable diligence one can be obtained; and if not then by any reputable person, in the presence of two witnesses.

Protest, how
made.

§ 2934. s 94. Protest must be made by an instrument in writing, giving a literal copy of the bill of exchange, with all that is written thereon, or annexing the original; stating the presentment and manner in which it was made; the presence or absence of the drawee or acceptor, as the case may be; the refusal to accept or to pay, or the inability of the drawee to give a binding acceptance, and in case of refusal, the reason assigned, if any, and, finally, protesting against all the parties to be charged.

Protest, where
made.

§ 2935. s 95. A protest for non-acceptance must be made in the city or town in which the bill is presented for acceptance, and a protest for non-payment in the city or town in which it is presented for payment.

Protest, when
to be made.

§ 2936. s 96. A protest must be noted on the day of presentment, or on the next business day; but it may be written out at any time thereafter.

Protest, when
excused.

§ 2937. s 97. The want of a protest of a foreign bill of exchange, or delay in making the same, is excused in like cases with the want or delay of presentment.

Notice of pro-
test, how
given.

§ 2938. s 98. Notice of protest must be given in the same manner as notice of dishonor, except that it may be given by the notary who makes the protest.

Waiver of
protest.

§ 2939. s 99. If a foreign bill of exchange on its face waives protest, notice of dishonor may be given to any party thereto, in like manner as of an inland bill; except that if any indorser of such a bill expressly requires protest to be made by a direction written on the bill at or before his indorsement, protest must be made and notice thereof given to him and to all subsequent indorsers.

Declaration
before pay-
ment for
honor.

§ 2940. s 100. One who pays a foreign bill of exchange for honor must declare, before payment, in the presence of a person authorized to make protest, for whose honor he pays the same, in order to entitle him to reimbursement.

Damages al-
lowed on dis-
honor of for-
eign bill.
March 9, 1882.

§ 2941. s 101. Damages are allowed as hereinafter prescribed. As a full compensation for interest accrued, before notice of dishonor, re-exchange, expenses and all other damages in favor of holders for value only, upon bills of ex-

change drawn or negotiated within this Territory and protested for non-acceptance or non-payment.

§ 2942. s 102. Damages are allowed under the last section upon bills drawn upon any person: Rate of damages

1. If drawn upon any person in this Territory, one dollar upon each one hundred dollars of the principal sum specified in the bill.

2. If drawn upon any person in any of the other States or Territories of the United States, two and a half dollars upon each one hundred dollars of the principal sum specified in the bill.

3. If drawn upon any person in any place in a foreign country, five dollars upon each hundred dollars of the principal sum specified in the bill.

§ 2943. s 103. From the time of notice of dishonor and demand of payment, lawful interest must be allowed upon the aggregate amount of the principal sum specified in the bill, and the damages mentioned in the preceding section. Interest on amount of protested bill.

§ 2944. s 104. If the amount of a protested bill of exchange is expressed in money of the United States, damages are estimated upon such amount, without regard to the rate of exchange. Damages, how estimated.

§ 2945. s 105. If the amount of the protested bill of exchange is expressed in foreign money, damages are estimated upon the value of a similar bill at the time of protest, in the place nearest to the place where the bill was negotiated, and where such bills are currently sold. When expressed in foreign money.

(ACT) CHAPTER III.

PROMISSORY NOTES.

SECTION.

2946 Definition.

2947 When instrument in form of bill
is deemed a promissory note.

SECTION.

2948 So a bill accepted by holders'
consent by strangers.

2949 Effect of delay in presentment.

Promissory
note, what.

§ 2946. s 106. A promissory note is an instrument, negotiable in form, whereby the signer promises to pay a specified sum of money.

March 9, 1882.
Certain instru-
ments promiss-
sory notes.

§ 2947. s 107. An instrument in the form of a bill of exchange, but drawn upon and accepted by the drawer himself, is to be deemed a promissory note.

Bill of ex-
change, when
converted into
a note.

§ 2948. s 108. A bill of exchange, if accepted with the consent of the owner by a person other than the drawee, or an acceptor for honor, becomes in effect the promissory note of such person, and all prior parties thereto are exonerated.

Effect of delay
in present-
ment

§ 2949. s 109. If a promissory note, payable on demand, or at sight, without interest, is not duly presented for payment within six months from its date, the indorsers thereof are exonerated, unless such presentment is excused, and Chapter I. and sections 66 and 87 of this act, shall apply to promissory notes.

(ACT) CHAPTER IV.

CHECKS.

SECTION.

2950 Definition.

SECTION.

2951 What rules apply to.

§ 2950. s 110. A check is a bill of exchange drawn upon a bank or banker, or person described as such upon the face thereof, and payable on demand, without interest.

check, what.

§ 2951. s 111. A check is subject to all the provisions of this act, concerning bills of exchange, except that:

Rules applicable to checks

1. The drawer and indorsers are exonerated by delay in presentment only to the extent of the injury which they suffer thereby.

2. An indorsee after its apparent maturity, but without actual notice of its dishonor, acquires a title equal to that of an indorsee before such period.

(ACT) CHAPTER V.

BANK NOTES.

SECTION.

2952 Remain negotiable after payment.

SECTION.

2953 When act took effect.

§ 2952. s 112. A bank note remains negotiable even after it has been paid by the maker.

Bank note negotiable after payment.

§ 2953. s 113. This act shall be published for six consecutive issues in the *Deseret News*, daily edition, and in two consecutive issues of the semi-weekly edition, and shall take effect at twelve at night of the last of its publication in the daily.

Law takes effect, when.

CHAPTER III.

INN KEEPERS.

SECTION.

2954 Penalty for false representations
to hotel keepers, etc.

2955 Giving lien to hotel keepers, etc.

SECTION.

2956 How sales made and notice
thereof.

2957 Storage charges, when and how
collected.

Penalty for
false repre-
sentations to
hotel keepers,
etc.
Feb. 15, 1876.

§ 2954. ⁽¹⁸⁷²⁾ Any person who shall put up at any hotel, inn, or boarding house, and shall procure any food, entertainment or accommodation, without paying therefor except where credit is given by express agreement, with intent to cheat or defraud such owner, or keeper thereof, out of the pay for the same; or who with intent to cheat or defraud such owner or keeper, out of the pay therefor, shall obtain credit at any hotel, inn or boarding house for such food, entertainment, or accommodation by means of any false show of baggage or effects brought thereto; or who shall with such intent remove or cause to be removed, any baggage, or effects from any hotel, inn or boarding house, while there is a lien existing thereon for the proper charges due from him for fare and board furnished therein, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding three months.

Giving lien to
hotel keepers,
etc.

§ 2955. ⁽¹⁸⁹⁴⁾ Whenever a special agreement shall have been made between the keeper of any hotel, inn, or boarding house, and any person boarding at such hotel, inn or boarding house, regarding the price of such person's board thereat, all the baggage, goods, and effects of every kind of such person kept at such hotel, inn or boarding house, shall be subject to the lien of such hotel keeper, inn keeper, or boarding house keeper, for all such sums as shall be at any time due to such keeper from such person for board or lodging, and such hotel keeper shall have the right to detain such baggage, goods and effects, until such debt so contracted shall be fully paid, and in case of the non-payment of such

debt for the period of sixty days after it is due, such hotel keeper, inn keeper or boarding house keeper shall have the right to sell said baggage, goods and effects or such part thereof as shall be necessary, and apply the proceeds of such sale to the payment of such debt.

§ 2956. ⁽¹⁸⁶⁶⁾ All sales under this act shall be at public ^{How sales} auction for cash. Before any such baggage, goods and effects ^{made and} shall be sold, at least ten days' notice of such sale shall be ^{notice thereof} given, by advertising the same at least five times in some newspaper published and having general circulation in the city, village, or town in which the hotel, inn, or boarding house is situated: or where no such paper is so published or circulated, then by written or printed handbills posted up in at least five public places, one of which shall be in the hotel, inn, or boarding house where the baggage, goods and effects are detained.

§ 2957. s. 4. Whenever a special agreement shall have ^{Storage} been made between the owner of a storage warehouse and ^{charges, when} parties storing any description of property therein regarding ^{and how col-} the price for such storage, said property shall be subject ^{lected,} to the lien of such storage warehouse owner for charges for ^{March 12, 1884} freight, storage, insurance, etc., and such storage warehouse owner shall have the right to detain such property until charges are paid, and in case of non-payment of such charges for the period of six months, such storage warehouse owner shall have the right to sell said property so stored, or such part thereof as may be necessary to pay charges. All such sales to be in accordance with the terms and conditions as provided for in section 3 of this Chapter.

CHAPTER IV.

COMMON CARRIERS.

SECTION.

2958 Lien of carriers for freight and back charges.

2959 When property may be sold to pay charges; surplus to be paid to owners of goods.

SECTION.

2960 Notice of sale to be advertised thirty days.

Lien of carrier for freight and back charges.

Feb. 20, 1874.

§ 2958. ⁽¹⁸⁶¹⁾ All common carriers in this Territory shall have a lien upon any goods, wares, merchandise or other property in their possession, as such carrier, for freight, or transportation thereof, including back charges paid by such carriers to connecting lines.

When property may be sold to pay charges.

§ 2959. ⁽¹⁸⁶¹⁾ That any railroad company or common carrier transporting freight, may, if any property transported by such carrier be not accepted, and taken away by the consignee thereof, within six months from the time it shall have been received at the point on such carrier's line or route, where the same is to be delivered, sell the same in the manner hereinafter prescribed, and out of the proceeds of such sale retain the amount due such carrier from the consignee for freight or carriage, and a reasonable compensation for the storage and care of such property during said time, together with reasonable and necessary costs of such sale; and the surplus, if any, shall be paid to the owner, consignee or agent.

Surplus to be paid to owners of goods.

Notice of sale to be advertised 30 days.

§ 2960. ⁽¹⁸⁶²⁾ Whenever any goods, wares, merchandise or other property shall remain in the possession of any carrier, at the end of six months from the time of its arrival at the place of delivery, it shall be lawful for such carrier to sell such property at public auction, by first publishing a notice thereof, in some newspaper published and having a general circulation in the county where such property is to be exposed for sale, for a period of thirty days prior to such sale; or if there is no paper published in such county, then in some newspaper published in this Territory, and having a general circulation in such county. Said notice shall contain the name and address, if known, of the consignee, the name of the consignor, from what place shipped, with a general description of the property to be sold, if the nature thereof be known; if not, then of the box, cask or other covering of the same.

PART EIGHTH.

PARTICULAR WRONGS.

CHAPTER I.

DEATH BY NEGLIGENCE.

SECTION.

2961 Company or persons liable for damages.

SECTION.

2962 Action to be brought by personal representative.

§ 2961. ⁽¹²¹⁶⁾ Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if the death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or the company or corporation which would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

Company or person liable for damages.
Feb. 20, 1874.

§ 2962. ⁽¹²¹⁷⁾ That every such action shall be brought by, and in the names of the personal representatives of such deceased person, and the amount received in every such action shall be distributed by direction and decree of the proper probate court, to such persons (other than creditors) as are by law entitled to distributive shares of the estate of such deceased person, and in such proportions as are prescribed by law; *Provided*, That every such action shall be commenced within two years after the death of such deceased person; *And provided further*, That the damages so recovered shall not in any case exceed the sum of ten thousand dollars.

Action to be brought by personal representatives.

CHAPTER II.

OF TRESPASS AND DAMAGE.

SECTION.	SECTION.
2963 Cutting grass on the land of another.	2967 Laying down fences.
2964 Cutting timber on the land of another.	2968 Action for damages to property.
2965 Property taken publicly.	2969 Infringing upon rights in regard to water.
2966 Crossing enclosure.	2970 Injury of fruit and shade trees.

Cutting grass on the land of another. March 3. 1882. § 2963. (1158) That if any person or persons shall cut grass for hay on any land belonging to another person or persons, without his, or their consent, an action for trespass may be had against such offender, and damages recovered by process of law.

Cutting timber on the land of another. § 2964. (1159) If any person shall cut or haul off timber from the possession of another person, without his or their consent, an action of trespass and damage may be had against such offender.

Property taken publicly. § 2965. (1160) If any person shall take any species of property belonging to another, publicly, but without the consent of the owner, an action of trespass may be had against such offender, and damages recovered by law.

Crossing enclosure. § 2966. (1161) If any person shall ride across, or drive a wagon through a field of grain, or over any enclosed ground, belonging to another person, an action of trespass may be had against such offender, and all damages recovered.

Laying down fence. § 2967. (1162) If any person shall drive through, or lay down, a fence belonging to another person, and shall fail to put the same up, such offender shall be liable for all damages, to be recovered under an action of trespass.

Action for damages to property. § 2968. (1163) An action for damages may be sustained for goods stored or property in the possession of another person, that may be damaged while in such possession.

§ 2969. (1164) That if any person or persons, after there shall have been a division of water lawfully made in any

county or precinct in this Territory, for irrigation or other ^{infringing upon rights in regard to water.} purposes, shall in any way infringe upon the rights of any person or persons, they shall be liable in an action of trespass to the parties damaged, and liable to be fined at the discretion of the court having jurisdiction.

§ 2970. ^(Hew) That all damage done to fruit or shade ^{in using fruit and shade trees.} trees in or around enclosures or lots, by careless driving, or the tying up of cattle and horses, or any needless destruction of any such shade or fruit trees, shall be considered a trespass, and such person or persons shall be liable for damage and fine according to the discretion of the court having jurisdiction.

PART NINTH.

STATUTES.

CHAPTER I.

LEGISLATION.

SECTION.

2971 State of Deseret statutes validated.
dated.

SECTION.

2972 When statutes take effect prior
to 1888.
2973 When later statutes take effect.

State of Des-
eret statutes
validated
Oct. 4, 1851.

§ 2971. ⁽¹⁾ The laws heretofore passed by the Provisional Government of the State of Deseret and which do not conflict with the "Organic Act," of said Territory, be, and the same are hereby declared to be legal, and in full force and virtue, and shall so remain until superseded by the action of the Legislative Assembly of the Territory of Utah.

Jan. 19, 1854.
Laws in force
from date of
publication.

§ 2972. ⁽²⁾ Each act and resolution is in force from the date of its publication in any public manner, unless a certain time is specified; and resolutions are equally valid with acts.

March 3, 1888.
When statutes
take effect.

§ 2973. That unless otherwise provided therein, all laws and resolutions which may hereafter be enacted by the Governor and Legislative Assembly of this Territory, shall go into effect and be operative at twelve o'clock midnight of the thirty-first day of May next after their passage and approval.

CHAPTER II.

COMPILATION AND DISTRIBUTION.

SECTION.	SECTION.
2974 Committee of compilation.	2978 How work to be done; printing to be let to lowest bidder.
2975 Authorized to employ assistance; to report.	2979 Book to be placed in the hands of auditor; distribution.
2976 Subject to control of legislature.	2980 Notice before distribution.
2977 To complete and publish compilation.	2981 Duty of person receiving statutes; refusal a misdemeanor.

§ 2974. s 1. Samuel R. Thurman, Chas. C. Richards, Jan. 19, 1888, Enos D. Hoge, Luther T. Tuttle and John E. Carlisle are Committee of hereby appointed and constituted a committee to compile, during the present session of the Legislative Assembly, all the public acts, laws and resolutions in force in said Territory, including those passed and approved during the present session of said Assembly.

§ 2975. s 2. Said committee are hereby authorized to Authority to employ assist- employ such professional and clerical assistance as may be necessary for the accomplishment of said compilation and shall report to said legislature from time to time during said session, such portions of said work as may be completed; and report the whole thereof systematically arranged and compiled on or before the first day of March, A. D. 1888. ance; to re- port.

§ 2976. s 3. Said compilation shall be subject to the Subject to control of approval of the said legislature, and said committee shall, at all times, be under the direction and control of the same, and the compensation of those employed by said committee, and the expense of said work shall be as determined by the legislature. legislature.

§ 2977. s 4. That if it shall be found to be impractic- To complete able to complete this work within the time specified in this act, or during said session, said committee shall continue the work of said compilation, and complete and publish, as soon as practicable, the same, together with the Organic Act of this Territory, the Declaration of Independence, Constitution of the United States, and such other laws of the United States as the committee may deem specially applicable to the Territories. and publish compilation.

How work to be done, printing to be let to the lowest bidder.

§ 2978. s 5. Said publication shall be in suitable form, in volumes, substantially bound, with marginal notes and proper index, not exceeding five thousand copies, the printing and binding of said work shall be let, by said committee, to the lowest responsible bidder resident in Utah Territory.

Books to be placed in hands of auditor, distribution.

§ 2979. s 6. Said books, when completed, shall be placed, by the committee, in the hands of the auditor of public accounts, to be by him distributed to the Governor, secretary, and judges of the supreme court of this Territory, members of the present Legislative Assembly, members of the Utah Commission, and Territorial, county and precinct officers, one copy each; and that the auditor retain two hundred copies for the use of future Legislative Assemblies, and place the residue of said books in the hands of the Territorial treasurer, to be sold by him to all other persons at such rates as said committee shall direct, and place the proceeds of such sales in the Territorial treasury.

Notice before distribution.

§ 2980. s 7. The auditor of public accounts shall before distributing the books herein provided to be furnished to county and precinct officers, cause notice to be inserted in each book that it is the property of this Territory and is furnished for the use of the office to which it is delivered, and must be transmitted by the incumbent thereof, at the expiration of his term, to his successors in office.

Duty of person receiving statutes, refusal a misdemeanor.

§ 2981. s 8. It shall be the duty of each county and precinct officer who receives any volume of the laws of this Territory, as hereinbefore provided, to carefully preserve the same, and at the expiration of his term of office to immediately deliver it to his successor in office; and any such county or precinct officer who wilfully neglects or refuses to so deliver such book or books to his successors, upon demand being made therefor, shall be deemed guilty of a misdemeanor, and may be fined in any sum not exceeding fifty dollars and the costs of prosecution.

CHAPTER III.

INTERPRETATION.

SECTION.

2982 Repeal of repealing statute.

2983 What certain words include.

SECTION.

2984 Word "seal" includes scroll.

§ 2982. ⁽⁴⁾ The repeal of a law shall not be construed to revive any law or part thereof, previously repealed by such law unless so revived in express terms. Repeal of repealing statute.

§ 2983. ⁽⁵⁾ Words used in one tense may include either: the masculine the feminine: the singular the plural, and the plural the singular; "person" may include a partnership, corporation or company; "writing" may include printing, and "oath" include affirmation or declaration; "signature" may include a mark with the person's name written near it, and witnessed by some person who can write; and where joint authority is given to three or more persons, such authority executed by a majority of such persons shall be valid, unless otherwise restricted in the law or instrument conferring such authority. What certain words may include.

§ 2984. ⁽⁶⁾ The word "seal" may include a scroll, printed or written, opposite the signature. Word "seal" includes scroll.

PART TENTH.

CODE OF CIVIL PROCEDURE.

AN ACT REVISING THE CODE OF CIVIL PROCEDURE OF UTAH TERRITORY

PRELIMINARY PROVISIONS.

SECTION.

- 2985 When act takes effect.
 2986 Not retroactive.
 2987 How construed.
 2988 Continued provisions, how construed.
 2989 Pending actions, how affected.
 2990 Limitations, unexpired continue and governed by this Code.
 2991 Holidays.
 2992 Computation of time.
 2993 Regulation of act with reference to holidays.

SECTION.

- 2994 Seal defined.
 2995 Joint authority.
 2996 Words and phrases.
 2997 Terms defined.
 2998 How statutes and rules affected by Code; statutes not revived by repeal of reviving statute.
 2999 How this act to be referred.
 3000 Civil and criminal remedies not merged.

When act
takes effect.

§ 2985. s 1. Be it enacted, etc.: This Code takes effect at twelve o'clock, noon, on the first day of August, eighteen hundred and eighty-four.

Not retro-
active.

§ 2986. s 2. No part of it is retroactive, unless expressly so declared.

How con-
strued.

§ 2987. s 3. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. The Code establishes the law of this Territory, respecting the subjects to which it relates, and its provisions and all proceedings under it, are to be liberally construed, with a view to effect its objects and to promote justice.

§ 2988. s 4. The provisions of this Code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments. Construed as continuations.

§ 2989. s 5. No action or proceeding commenced before this Code takes effect, and no right accrued, is affected by its provisions, but the proceedings therein must conform to the requirements of this Code as far as applicable. Actions, etc. not affected by this code.

§ 2990. s 6. When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this Code goes into effect, and the same or any limitation is prescribed in this Code, the time which has already run shall be deemed a part of the time prescribed as such limitation by this Code. Limitations shall continue to run.

§ 2991. s 7. Holidays, within the meaning of this Code, are every Sunday; the first day of January; the twenty-second day of February; the thirtieth day of May, commonly called Decoration Day; the fourth day of July; the twenty-fourth day of July, commonly called Pioneers' Day; the twenty-fifth day of December; and all days which may be set apart by the President of the United States, or the Governor of Utah Territory, by proclamation, as days of fast or thanksgiving. Holidays.

§ 2992. s 8. The time in which any act provided by law is to be done is computed by excluding the first day, and including the last day, unless the last day is a holiday, and then it is also excluded. Computation of time.

§ 2993. s 9. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed: *Provided*, That nothing in this or the preceding section shall be so construed as to in any manner change, alter or modify the time of the maturity of negotiable instruments as provided in an act entitled "An Act in relation to Negotiable Instruments," approved March 9, 1882. Certain act not to be done on holidays.

§ 2994. s 10. When the seal of a court, or public officer, is required by law to be affixed to any paper, the word seal includes an impression of such seal upon the paper alone, as well as upon wax or a wafer affixed thereto. In all other cases the word seal may include a scroll printed or written. Seal defined.

- Joint authority.** § 2995. s 11. Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.
- Words and phrases.** § 2996. s 12. Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.
- Terms defined.** § 2997. s 13. Words used in this Code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural; and the plural the singular: the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration: and every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose"; signature or subscription includes mark, when the person cannot write his name being written near it and witnessed by a person who writes his own name as a witness. The following words also have in this Code the signification attached to them in this section, unless otherwise apparent from the context:
- Property defined.** 1. The word "property" includes both real and personal property.
- Real property.** 2. The words "real property" are co-extensive with lands, tenements and hereditaments, water rights, possessory rights and claims.
- Personal property.** 3. The words "personal property" include money, goods, chattels, things in action, and evidences of debt.
- Month** 4. The word "month" means a calendar month, unless otherwise expressed.
- Will.** 5. The word "will" includes codicils.
- Writ.** 6. The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer, and the word "process" a writ or summons issued in the course of judicial proceedings.
- State.** 7. The word "State," when applied to the different parts of the United States, includes the District of Columbia and the Territories; and the words "United States" may include the District and Territories.

§ 2998. s 14. No statute, law or rule, is continued in force because it is consistent with the provisions of this Code on the same subject; but in all cases provided for by this Code, all statutes, laws and rules heretofore in force in this Territory, whether consistent or not with the provisions of this Code, unless expressly continued in force by it, are repealed and abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this code provided; nor does it affect any private statute not expressly repealed.

§ 2999. s 15. This act, whenever cited, enumerated, referred to or amended, may be designated simply as "The Code of Civil Procedure," adding, when necessary, the number of the section.

§ 3000. s 16. When the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

(ACT) PART I.

OF COURTS OF JUSTICE.

TITLE I.

ORGANIZATION AND JURISDICTION.

CHAPTER I.

COURTS OF JUSTICE IN GENERAL.

SECTION.

SECTION.

3001 The several courts of this Ter- 3002 Courts of record.
ritory.

The courts.

§ 3001. s 17. The following are the courts of justice
of this Territory:

1. The supreme court.
2. The district courts.
3. The probate courts.
4. The justices' courts.

Courts of
record.

§ 3002. s 18. The courts enumerated in the first three
subdivisions of the preceding section are courts of record.

CHAPTER II.

SUPREME COURT.

SECTION.

3003 Jurisdiction.

3004 Original jurisdiction.

3005 Appellate jurisdiction.

3006 May reverse, affirm or modify,
etc., remittitur.

SECTION.

3007-3008 Two justices a quorum;
one may adjourn.

3009 Two terms to be held at capital.

§ 3003. s 19. The jurisdiction of this court is of two Jurisdiction.
kinds:

1. Original; and,

2. Appellate.

§ 3004. s 20. Its original jurisdiction extends to the Original juris-
issuance of writs of mandate, certiorari, prohibition, habeas isdiction.
corpus, and all writs necessary to the complete exercise of its
appellate jurisdiction.

§ 3005. s 21. Its appellate jurisdiction extends to a Appellate in-
review of all cases removed to it under such regulations as isdiction
are or may be prescribed by law, from the decisions of the
district courts.

§ 3006. s 22. The court may reverse, affirm, or modify May reverse,
any order or judgment appealed from, and may direct the affirm, or
proper judgment or order to be entered, or direct a new trial modify, etc
or further proceedings to be had. Its judgment must be re- remittitur.
mitted to the court from which the appeal was taken. The
decisions of the court shall be given in writing; and in giving Decisions in
a decision, if a new trial be granted, the court shall pass upon writing.
and determine all the questions of law involved in the case,
presented upon such appeal, and to the necessary final
determination of the case.

§ 3007. s 23. The presence of two justices of the Presence of
supreme court is necessary for the transaction of business, but two justices.
one of the justices may adjourn the court from day to day, or
to a particular day, or until the next term.

§ 3008. s 24. The concurrence of two justices of the Concurrence
supreme court is necessary to pronounce a judgment; if two of two justices
do not concur, the case must be re-heard. necessary.

§ 3009. s 25. There must be held in each year two Terms of the
terms of the supreme court for the hearing of causes, to be supreme
held at the capital of the Territory, at such times as the Gov- court.
ernor thereof may by proclamation fix.

CHAPTER III.

DISTRICT COURTS.

SECTION.

3010 Jurisdiction.
 3011 Duration of terms.
 3012 Adjournments.

SECTION.

3013 Judgments and orders may be
 entered in vacation.

Jurisdiction

§ 3010. s 26. The jurisdiction of the district courts extends:

1. To all civil actions for relief formerly given in courts of equity.

2. To all civil actions in which the subject of litigation is not capable of pecuniary estimation.

3. To all civil actions in which the subject of litigation is capable of pecuniary estimation or which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine.

4. To actions of forcible entry and detainer to proceedings in insolvency; to actions to prevent or abate a nuisance; to actions of divorce, and for annulment of marriage, and to all such special cases and proceedings as are not otherwise provided for.

5. To the trial of all indictments; said courts shall have the power of naturalization, and to issue papers therefor. Said courts and their judges, or any of them, shall have power to issue writs of mandamus, certiorari, prohibition, *quo warranto*, in their respective districts, and of habeas corpus on petition by or on behalf of any person in actual custody. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days.

6. Its appellate jurisdiction extends to all cases arising in probate or justices' courts; and to all other matters and cases wherein an appeal to it is or may be allowed by law.

Duration of
term.

§ 3011. s 27. Each term must be held until the business is disposed of, or until a day fixed for the commencement of some other term in the district.

§ 3012. s 28. The court may adjourn from time to time during the term, and may, when the public convenience requires, adjourn the term over the time fixed by law for the commencement of another term in the same district.

Adjourn-
ments

§ 3013. s 29. Judgments and orders of this court may be entered either in term or vacation.

Judgments
and orders
entered in va-
cation.

CHAPTER IV.

PROBATE COURT.

SECTION.

3014 Probate court in each county.

3015 Jurisdiction of probate court.

3016 Presumptions as to probate proceedings.

SECTION.

3017 Always open; how regular sessions held.

3018 Terms to be held at county seat.

§ 3014. s 35. There must be a probate court held in each of the counties.

Court in each
county.

§ 3015. s 36. The probate court has jurisdiction:

Jurisdiction of
probate court.

1. In the settlement of the estates of decedents, and in matters of guardianship and other like matters.

2. In suits of divorce for statutory causes concurrently with the district courts, but any defendant in a suit for divorce commenced in this court shall be entitled, after appearance and before plea or answer, to have said suit removed to the district court having jurisdiction, when said suit shall proceed in like manner as if originally commenced in said district court.

3. To make such orders as may be necessary to the exercise of the powers conferred upon it.

4. To enter land in trust for the use and benefit of the occupants of towns in the various counties, according to the provisions of any law of Congress, and under such rules and regulations as are or may be prescribed by the Legislative Assembly.

§ 3016. s 37. The probate proceedings, records, orders, judgments, and decrees of this court are construed in the

Presumptions
as to probate
proceedings.

same manner, and with like intendments, as the proceedings in courts of general jurisdiction, and to them there is accorded like force, effect, and legal presumptions as to the records, orders, judgments, and decrees of district courts.

Always open;
when regular
sessions held.

§ 3017. s 38. The probate courts shall always be opened for transaction of business, but regular sessions thereof shall be held as follows: In the county of Salt Lake, on the second and fourth Mondays of each month; in the counties of Cache, Weber, Utah and Sanpete, on the second Monday in each month, and in the remaining counties on the second Monday of March, June, September and December of each year; each session shall continue until all the business then ready for a hearing is disposed of.

To be held at
county seat.

§ 3018. s 39. The terms of the probate court must be held at the county seat.

CHAPTER V.

JUSTICES' COURTS.

SECTION.

3019 Where justice to hold court.

3020 Civil jurisdiction.

3021 Concurrent jurisdiction.

SECTION.

3022 Process runs to whole county.

3023 Criminal jurisdiction.

Justice must
hold court
where.

§ 3019. s 44. Every justice of the peace must hold a justice's court in the precinct or city for which he is elected or appointed.

Civil jurisdic-
tion.

§ 3020. s 45. The civil jurisdiction of these courts within their respective precincts or cities extends:

1. To an action arising on contract for the recovery of money only, if the sum claimed is less than three hundred dollars.

2. To an action for damages for inquiry to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real property, where no issue is raised by the answer involving the plaintiff's title to or possession of the same, if the damages claimed be less than three hundred dollars.

3. To an action for a fine, penalty or forfeiture, less than three hundred dollars, given by statute or the ordinances

of an incorporated city where no issue is raised by the answer involving the legality of any tax, impost, assessment, toll or municipal fine.

4. To an action upon a bond or undertaking conditioned for the payment of money, less than three hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. When the payments are to be made by instalments, and action may be brought for each instalment as it becomes due.

5. To an action to recover the possession of personal property, when the value of such property is less than three hundred dollars.

6. To take and enter judgment on the confession of a defendant, when the amount confessed is less than three hundred dollars.

§ 3021. s 46. The justices' courts shall have concurrent jurisdiction with the district courts within their respective precincts and cities: Jurisdiction of JUSTICES' COURT. March 11, 1886.

1. In actions of forcible entry, forcible detainer, or unlawful detainer, where the whole amount of the rent and damages claimed is less than three hundred dollars.

2. In actions to enforce and foreclose liens on personal property, where the amount of the liens and the value of the property are each less than three hundred dollars.

§ 3022. s 47. Mesne and final process of justices' courts may be issued to any part of the county in which they are held. Jurisdiction extends to county.

§ 3023. s 48. These courts have jurisdiction of the following public offences, committed within the respective counties in which such courts are established: Criminal jurisdiction.

1. Petit larceny.

2. Assault and battery, not charged to have been committed upon a public officer in the discharge of his duties.

3. Breaches of the peace, committing a wilful injury to property, and all misdemeanors punishable by a fine less than three hundred dollars, or imprisonment in the county jail or city prison not exceeding six months, or by both such fine and imprisonment.

CHAPTER VI.

GENERAL PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS.

SECTION.	SECTION.
3024 Sittings public.	3034 Failure of term recognizances, etc., not invalid; proceedings continued.
3025 Discretion to exclude persons from court.	3035 Persons bound to appear, to appear at time so fixed.
3026 Powers of every court.	3036 Change of place of holding court in what cases.
3027 Courts of record may make rules.	3037 Effect of change on persons held or bound to appear.
3028 When rules of court take effect.	3038 Rooms may be provided when ordered by court.
3029-3030 Days when court may or may not be open or judicial business done; exceptions.	3039 Courts having seals.
3031 Court appointed for prohibited days, next day deemed appointed.	3040 Clerk to keep seal.
3032-3033 Adjournment of court in absence of judge.	3041 To what proceedings or documents to be affixed.

Sittings public § 3024. s 50. The sittings of every court of justice are public, except as provided in the next section.

Limitations on proceeding section. § 3025. s 51. In an action for divorce, criminal conversation, seduction, abortion, bastardy, rape, and assault with intent to commit rape, the court may, in its discretion exclude all persons who are not directly interested therein, excepting jurors, witnesses and officers of the court; *Provided*, That in any cause the court may, in its discretion, during the examination of a witness, exclude any and all other witnesses in the cause.

Powers of court respecting the conduct of judicial proceedings. § 3026. s 52. Every court has power:
1. To preserve and enforce order in its immediate presence.

2. To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority.

3. To provide for the orderly conduct of proceedings before it or its officers.

4. To compel obedience to its judgments, orders and process, and to the orders of a judge out of court, in an action or proceeding pending therein.

5. To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner

connected with a judicial proceeding before it, in every matter pertaining thereto.

6. To compel the attendance of persons to testify in an action or proceeding pending therein, in the cases and manner provided in this Code.

7. To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties.

8. To amend and control its process and orders so as to make them conformable to law and justice.

9. To devise and make new process and forms, of proceedings consistent with law necessary to carry into effect the powers and jurisdiction possessed by it.

§ 3027. s 53. Every court of record may make rules, Courts of record may make rules. not inconsistent with the laws of this Territory, for its own government and the government of its officers, but such rules must neither impose any tax or charge upon any legal proceeding, nor give any allowance to any officer for services.

§ 3028. s 54. The rules adopted by the supreme court take effect twenty days, and those adopted by other courts When rules take effect. ten days, after their publication.

§ 3029. s 55. Courts of justice may be held and judicial business transacted on any day, except as provided in the Days on which courts, etc., may be held. next section.

§ 3030. s 56. No court can be opened, nor can any Days on which courts shall not be opened, except, etc. judicial business be transacted, on Sunday, on the first day of January, on the twenty-second day of February, on the thirtieth day of May, on the fourth day of July, on the twenty-fourth day of July, on Christmas or Thanksgiving day, or on any day on which the general election is held, or on any legal holiday, except for the following purposes: *March 11, 1886.*

1. To give upon their request, instructions to a jury when deliberating on their verdict.

2. To receive a verdict or discharge a jury.

3. For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature; *Provided*, That in civil causes orders of arrest may be made and executed; writs of attachment, executions, injunctions, and writs of prohibition may be issued and served; proceedings to recover possession of personal property may be had; and suits and processes for obtaining any such writs and proceedings may be instituted, issued and served on any day.

Court appointed, etc., for those days deemed for next day.

§ 3031. s 57. If any of the days mentioned in the last section happen to be the day appointed for the holding of a court, or to which it is adjourned, it is deemed appointed for, or adjourned to the next day.

Adjournment of court for absence of judge.

§ 3032. s 58. If no judge attend on the day appointed for the holding or sitting of a court, or on the day to which it may have been adjourned, before noon, the clerk shall make an entry thereof in his record, and the marshal, sheriff, or clerk must adjourn the court until the next day at ten o'clock a. m.; and if no judge attend on that day, before noon, the marshal, sheriff, or clerk must adjourn the court until the following day, at the same hour, and so on from day to day, for one week, unless the judge, by written order, directs it to be adjourned to some day certain, fixed in said order, in which case it shall be so adjourned.

Same.

§ 3033. s 59. If no judge attend for one week, and no written order is made, as provided in the last section, the marshal, sheriff or clerk shall adjourn the session until the time appointed for the holding of the next regular session.

Failure of term does not invalidate any recognizance or other instrument, etc.

§ 3034. s 60. No recognizance, or other instrument or proceeding, shall be rendered invalid by reason of there being a failure of the term; but all proceedings pending in court shall be continued to the next regular term, unless an adjournment be made as authorized in section 58.

Persons held to appear at regular term, must appear at time fixed, as aforesaid.

§ 3035. s 61. In case of such continuance or adjournment, persons recognized or bound to appear at the regular term which has failed as aforesaid, shall be held bound in like manner to appear at the time so fixed, and their sureties, if any, shall be liable, in case of their non-appearance in the same manner as though the term had been held at the regular time and they had failed to make their appearance thereat.

Judge may in certain cases, change place of holding court.

§ 3036. s 62. The judge or judges authorized to hold or preside at a court appointed to be held in a county, city or town, may, by an order filed with the clerk, and published as he or they may prescribe, direct that the court may be held or continued at any other place in the city, town or county, than that appointed, when war, insurrection, pestilence or other public calamity or the danger thereof, or the destruction or danger of the building appointed for holding court, may render it necessary, and may, in the same manner, revoke the order, and in his or their discretion, appoint another place in the same city, town or county, for holding court.

§ 3037. s 63. When the court is held at a place appointed as provided in the last preceding section, every person held to appear at the court must appear at the place so appointed.

§ 3038. s 64. If suitable rooms for holding the district courts, and the chambers of the judges of such courts be not provided in the place or places appointed for holding said courts, together with attendants, furniture, fuel, lights, and stationery sufficient for the transaction of the Territorial business, the court may direct the sheriff of the county where the court is to be held to provide such rooms, attendants, furniture, fuel, lights and stationery, and the expenses thereof are a charge against the Territory.

§ 3039. s 65. Each of the following courts has a seal: What courts have seals.

1. The supreme court.
2. The district courts.
3. The probate courts.

§ 3040. s 66. The clerk of the court must keep the seal thereof. Seal, by whom kept.

§ 3041. s 67. The seal of the court need not be affixed to any proceeding therein, or document, except: Seal of court, to what proceedings affixed.

1. To a writ.
2. To a certificate of the probate of a will, or of appointment of an executor, administrator, or guardian.
3. To the authentication of a copy of a record or other proceeding of a court, or of an officer thereof, or of a copy of a document on file in the office of the clerk.

TITLE II.

JUDICIAL OFFICERS.

CHAPTER I.

JUDICIAL OFFICERS IN GENERAL.

SECTION.

SECTION.

3042 Probate judge to reside at county seat and every justice of the peace in his precinct. 3043 District judge may hold court in another district.

Residence of probate judges and justice.

§ 3042. s 70. Each probate judge shall reside at the county seat of his county, during the term of his office, and every justice of the peace shall reside in the city or precinct in which his court is held.

District judge may hold courts in any other district.

§ 3043. s 71. Whenever the condition of the business in the district court of any district is such that the judge of the district is unable to do the same, he may request the judge of either of the other districts to assist him, and upon such request made, the judge so requested may hold the whole or part of any term or any branch thereof; and when by reason of sickness, or absence from the Territory, or from any other cause, a court cannot be held in any district by the judge thereof, a certificate of that fact must be transmitted by the clerk to the Governor, who may thereupon direct some other district judge to hold such court, and the acts of such judge so holding such court or any branch thereof as above mentioned, shall be of equal force as if he were duly assigned to hold the courts in such district.

CHAPTER II.

POWERS OF JUDGE OF CHAMBERS.

SECTION.

3044 Powers of district judges at chambers.
 3045 May try certain cases by consent out of court.

SECTION.

3046 Stipulation for such trial, what to contain.

§ 3044. s 73. District judges, at chambers, may grant all orders and writs which are usually granted in the first instance upon *ex parte* applications, and may at chambers hear and dispose of such writs and of motions for new trials, and try and determine writs of habeas corpus, certiorari, mandate and prohibition, and may hear applications to discharge all such orders and writs. In case of vacancy in the office of any district judge, or his absence from the Territory, motions may be made before, and orders granted by, any other district judge.

Powers of district judges at chambers

§ 3045. s 74. The parties to an action or special proceeding, pending in a court of record, may, with the consent of the judge who is to try or hear it, without a jury, stipulate in writing, that it shall be tried or heard and determined, elsewhere than at the place appointed for holding said court.

Place of hearing actions and proceedings may be changed, when.

§ 3046. s 75. The stipulation must specify the place of trial or hearing, and must be filed in the office of the clerk.

Stipulation must specify place of trial and be filed.

CHAPTER III.

DISQUALIFICATION OF JUDGES.

SECTION.

3047 When disqualified.

3048 Not to act as attorney in his own court.

SECTION.

3049 Justice of supreme court not to act as attorney in any court, unless he is a party.

3050 No judge or judicial officer to have a practicing partner.

When disqualified.

§ 3047. s 76. No justice, judge, or justice or the peace shall sit or act as such in any action or proceeding.

1. To which he is a party, or in which he is interested.

2. When he is related to either party by consanguinity or affinity within the third degree, computed according to the rules of law.

3. When he has been attorney or counsel for either party in the action or proceeding.

But the provisions of this section shall not apply to the arrangement of the calendar or the regulation of the order of business, nor to the power of transferring the action or proceeding, to some other court.

Not to act as attorney in his own court.

§ 3048. s 77. A judge cannot act as attorney or counsel in a court in which he is judge, or in an action or proceeding removed therefrom to another court for trial or review in an action or proceeding from which an appeal may lie to his own court.

Certain judges not to act as attorneys.

§ 3049. s 78. A justice of the supreme court, or judge of the district court, cannot act as attorney or counsel in any court except in an action or proceeding to which he is a party on the record.

No judicial officer to have a partner.

§ 3050. s 79. No judge or other judicial officer shall have a partner acting as attorney or counsel in any court of this Territory.

CHAPTER IV.

INCIDENTAL POWERS AND DUTIES OF JUDICIAL OFFICERS.

SECTION.

SECTION.

3051 Powers of judges out of court.

3053 May punish for contempt.

3052 Powers of judicial officers as to conduct of proceedings.

3054 Judges having power and when, to take acknowledgments.

§ 3051. s 82. A judge may exercise, out of court, all the powers expressly conferred upon a judge as contradistinguished from the court.

General powers of judges out of court.

§ 3052. s 83. Every judicial officer has power:

Powers of judicial officers as to conduct proceedings before them

1. To preserve and enforce order in his immediate presence, and in proceedings before him, when he is engaged in the performance of official duty.

2. To compel obedience to his lawful orders as provided in this Code.

3. To compel the attendance of persons to testify in a proceeding before him, in the cases and manner provided in this Code.

4. To administer oaths to persons in a proceeding pending before him, and in all other cases where it may be necessary in the exercise of his powers and duties.

§ 3053. s 84. For the effectual exercise of the powers conferred by the last preceding section, a judicial officer may punish for contempt in the cases provided in this Code.

same.

§ 3054. s 85. The justices of the supreme court, and the judges of the district courts, have power in any part of the Territory, and probate judges and justices of the peace within their respective counties, to take and certify:

1. The proof and acknowledgment of a conveyance of real property, or of any other written instrument.

2. The acknowledgment of a satisfaction of a judgment of any court.

3. An affidavit or deposition to be used in this Territory.

CHAPTER V.

MISCELLANEOUS PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS.

SECTION.

3055 Subsequent application for orders refused, when prohibited
 3056 Violation of preceding section.
 3057 Proceedings not affected by vacancy in office.

SECTION.

3058 Proceedings to be in English language.
 3059 Customary abbreviations allowed.
 3060 Means to carry jurisdiction into effect.

Subsequent
 applications
 for orders,
 when refused.

§ 3055. s 88. If an application for an order, made to a judge of the court in which the action or proceeding is pending, is refused in whole or in part, or is granted conditionally, no subsequent application for the same order can be made to any other judge, except of a higher court; but nothing in this section applies to motions refused for any informality in the papers or proceeding necessary to obtain the order, or to motions refused, with liberty to renew the same.

Violation of
 last section.

§ 3056. s 89. A violation of the last preceding section may be punished as a contempt, and an order made contrary thereto may be revoked by the judge who made it or vacated by a judge of the court in which the action or proceeding is pending.

No proceed-
 ings affected
 by vacancy in
 office of judge,
 etc.

§ 3057. s 90. No proceeding in any court of justice, in an action or special proceeding pending therein, is affected by a vacancy in the office of all or any of the judges, or by the failure of a term thereof.

Proceedings to
 be in the Eng-
 lish language.

§ 3058. s 91. Every written proceeding in a court of justice in this Territory shall be in the English language, and judicial proceedings shall be conducted, preserved, and published in no other.

Abbreviations
 and figures.

§ 3059. s 92. Such abbreviations as are in common use may be used, and numbers may be expressed by figures or numerals in the customary manner.

Means to be
 used to exe-
 cute judicial
 powers in
 certain cases.

§ 3060. s 93. When jurisdiction is, by this Code or by any other statute, conferred on a court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code, or the statute.

TITLE III.

PERSONS SPECIALLY INVESTED WITH POWERS OF A JUDICIAL
NATURE.

CHAPTER I.

OF JURORS.

SECTION.	SECTION.
3061 Jury defined.	3078 Additional jurors, how drawn.
3062 Different kinds of juries.	3079 Clerk to furnish list of jurors.
3063 Grand jury defined.	3080 How jurors to be summoned.
3064 Jury trial defined.	3081-3082 For justice's court, how summoned.
3065 Number of a trial jury.	3083 Officer's return.
3066 Jury of inquest defined.	3084 Jury of inquest, how summoned.
3067 Who are competent jurors.	3085 Obedience to summons, how enforced.
3068 Who are not.	3086-3087 Grand jury, how constituted and empaneled.
3069 Who are exempt.	3088 Names of jurors, how kept.
3070 Who may be excused.	3089 First jury, how empaneled in civil and criminal cases.
3071 Exempt persons may send affidavit to clerk.	3090-3091 In justice's court, how juries obtained in civil and criminal cases.
3072 When jury list to be prepared.	3092 Jury of inquest, how obtained.
3073 Jurors to be drawn pursuant to judge's notice.	
3074-3076 Jury, how drawn and summoned.	
3077 Such jurors to constitute grand and petit juries.	

§ 3061. s 98. A jury is a body of men temporarily selected from the citizens of a particular district and invested with power to present or indict a person for a public offence, or to try a question of fact. Jury defined.

§ 3062. s 99. Juries are of three kinds: Different kinds of juries.

1. Grand juries.
2. Trial juries.
3. Juries of inquest.

§ 3063. s 100. A grand jury is a body of men, fifteen in number, returned in pursuance of law from citizens of the district before a court of competent jurisdiction, and sworn to inquire of public offences committed or triable within the district. Grand jury defined.

Trial jury defined.

§ 3064. s 101. A trial jury is a body of men returned from the citizens of a particular district before a court or officer of competent jurisdiction, and sworn to try and determine by unanimous verdict a question of fact.

Number of a trial jury.

§ 3065. s 102. A trial jury in a district court consists of twelve, and in the justices' courts of six men, unless the parties to the action or proceeding, in other than criminal cases, agree upon a less number.

Jury of inquest defined.

§ 3066. s 103. A jury of inquest is a body of men summoned from the citizens of a particular district, before the marshal, sheriff or coroner, or other ministerial officer, to inquire of particular facts.

Who are competent to act as jurors.

§ 3067. s 104. A person is competent to act as a juror if he be:

1. A male citizen of the United States over the age of twenty-one years; and,

2. Who can read and write in the English language; and,

3. Who resides in, and has resided in the judicial district in which he is called upon to serve, six months next preceding the time he is selected by the probate judge and clerk of the district court, to serve as a juror as provided by law; *Provided*, That the residence required to render a person competent to serve as a juror in a justice's court, or on an inquest, is in the county for a period of six months next preceding the time he is actually called to serve; and,

Provido.

4. Who is a tax payer in the Territory; and,

5. Who is of a reputable sound mind and discretion, and who is not so disabled in body as to be unable to serve.

Who are not competent to act as jurors.

§ 3068. s 105. A person is not competent to act as a juror:

1. Who does not possess the qualification prescribed by the last preceding section.

2. Who has been convicted of malfeasance in office or any felony or other high crime.

3. Who is an officer or soldier of the United States, or a person subject to their military control.

Who are exempt.

§ 3069. s 106. A person is exempt from liability to act as a juror if he be:

1. A judicial or civil officer of the United States, or of the Territory of Utah.

2. A person holding a county office.

3. An attorney and counselor-at-law.
4. A person editing a newspaper or periodical.
5. A teacher in a college, academy or school.
6. A practicing physician or surgeon.
7. An officer, keeper or attendant of an almshouse, hospital, asylum, or other charitable institution.
8. Engaged in the performance of duty as officer or attendant of a county jail or the Territorial prison.
9. An express agent, mail carrier, telegraph operator, miller or keeper of a public ferry or toll gate.
10. A dispensing druggist of a prescription drug store.
11. A superintendent, engineer, conductor, fireman or station agent of a railroad.

12. A person drawn as a juror in any court of record in this Territory, upon a regular panel, who has served as such within a year; but this exemption shall not extend to a person who is summoned as a juror for the trial of a particular case.

§ 3070. s 107. A juror cannot be excused by the court for slight or trivial cause, or for hardship or inconvenience to his business, but only when material injury or destruction to his property, or that of the public entrusted to him is threatened, or when his own health, or the sickness or death of a member of his family, requires his absence. Who may be excused.

§ 3071. s 108. If a person exempt from liability to act as a juror, as provided in section 106, be summoned as a juror, he may make and transmit his affidavit to the clerk of the court for which he is summoned, stating his office, occupation, or employment; and such affidavit shall be delivered by the clerk to the judge of the court when the name of such person is called, and if sufficient in substance, shall be received as an excuse for non-attendance in person. The affidavit shall then be filed by the clerk. May transmit affidavit of excuse.

§ 3072. s 109. In the month of January in each year, the clerk of the district court in each judicial district, and the judge of probate of the county in which the district court is next to be held, shall prepare a jury list from which grand and petit jurors shall be drawn, to serve in the district courts of such district, until a new list shall be made as herein provided. Said clerk and probate judge shall alternately select the name of a male citizen of the United States, possessing the qualifications mentioned in section 104, and as selected When and how jury list to be prepared.

the name and residence of each shall be entered upon the list, until the same shall contain two hundred names, when the same shall be duly certified by such clerk and probate judge; and the same shall be filed in the office of the clerk of such district court, and a duplicate copy shall be made and certified by such officers, and filed in the office of said probate judge.

Jury to be drawn upon the order of the judge.

§ 3073. s 110. Whenever a grand or petit jury is to be drawn to serve at any term of the district court, the judge of such district shall give public notice of the number, time and place of the drawing of such jury, which shall be at least twelve days before the commencement of such term, and on the day and at the place thus fixed, the judge of such district shall hold an open session of his court, and shall preside at the drawing of such jury.

Jury, how drawn.

§ 3074. s 111. The clerk of such court shall write the name of each person on the jury lists returned and filed in his office upon a separate slip of paper, as nearly as practicable of the same size and form, and all such slips shall, by the clerk in open court, be placed in a covered box, and thoroughly mixed and mingled; and thereupon the United States marshal, or his deputy, shall proceed to fairly draw by lot from said box such number of names as may have previously been directed by said judge.

Grand jury to be drawn first, when

§ 3075. s 112. If both a grand and petit jury are to be drawn to serve at the same term, the grand jury shall be drawn first. Eighteen names shall be drawn from which to form a grand jury.

Marshal to summon jurors

§ 3076. s 113. When the drawing shall have been concluded, the clerk of the district court shall issue a venire to the marshal, or his deputy, returnable at such time in the term as the judge may direct, and directing him to summon the persons so drawn, and the same shall be duly served on each of the persons so drawn at least seven days before the commencement of the term at which they are to serve.

Grand and petit juries.

§ 3077. s 114. The jurors so drawn and summoned shall constitute the regular grand and petit juries for the term for all cases. And the names thus drawn from the box by the clerk shall not be returned to or again placed in said box until a new jury list shall be made.

Additional jurors, how drawn.

§ 3078. s 115. If, during any term of the district court, any additional grand or petit jurors shall be necessary, the same shall be drawn from said box by the United States

marshal in open court; but if the attendance of those drawn cannot be obtained in a reasonable time, they may be laid aside, and other names may be drawn in their place, in the same manner.

§ 3079. s 116. The clerk of the district court must furnish any person applying therefor, and paying the fees allowed by law for the same, a copy of the list of jurors drawn to attend any court. Clerk must furnish list of jurors, when.

§ 3080. s 117. As soon as he receives the venire, the United States marshal must summon the persons named therein to attend as such jurors, by giving personal notice to each, or by leaving a written notice at his place of residence, with some person of proper age, and must return the venire to the court at the time when it is made returnable, specifying the names of those who were summoned and the manner in which each person was notified. The jurors drawn under section 115 may be required to appear forthwith or at a time to be named in the venire, as the court may direct, and the officers summoning such jurors shall return the venire as hereinbefore provided. Marshal to summon jurors, how.

§ 3081. s 118. When jurors are required in any justice's court the number required by law must, upon the order of the justice thereof, be summoned by the sheriff, city marshal or constable of the jurisdiction. For justices' courts how summoned.

§ 3082. s 119. Such jurors must be summoned from the persons resident of the city or precinct, competent to serve as jurors, by notifying them orally that they are so summoned, and of the time and place at which their attendance is required. How summoned.

§ 3083. s 120. The officer summoning such juror must, at the time fixed for their appearance, return it to the court, with a list of the persons summoned endorsed thereon. Officer's return.

§ 3084. s 121. Juries of inquest must be summoned by the officer before whom the proceedings are had, or any sheriff, or constable, from the persons resident of the county competent to serve as jurors, by notifying them orally that they are so summoned, and of the time and place at which their attendance is required. Juries of inquest, how summoned.

§ 3085. s 122. Any juror summoned who wilfully, and without reasonable excuse, fails to attend, may be attached and compelled to attend, and the court may also impose a fine, not exceeding one hundred dollars, upon which execution may issue. If the juror was not personally served, the fine must Obedience to summons, how enforced.

not be imposed until, upon an order to show cause, an opportunity has been offered the juror to be heard.

Grand jury
how consti-
tuted.

§ 3086. s 123. Fifteen persons shall constitute a grand jury, twelve of whom shall constitute a quorum, and when of the jurors summoned no more nor less than fifteen attend, they shall constitute the grand jury. If more than fifteen attend, the clerk must call over the list summoned, and the fifteen first answering shall constitute the grand jury. If less than fifteen attend, the panel may be filled to fifteen as provided in section 115.

How im-
paneled.

§ 3087. s 124. Thereafter such proceedings shall be had in impaneling the grand jury as are or may be prescribed by law regulating the procedure in criminal cases.

Names of trial
jurors, how
kept.

§ 3088. s 125. At the opening of court on the day trial jurors have been summoned to appear, the clerk shall call the names of those summoned, and the court may then hear the excuses of jurors summoned; the clerk shall then deposit the slips or ballots containing the names of the jurors present and not excused, in a box to be kept for that purpose.

Jury to be im-
paneled as
prescribed,
how.

§ 3089. s 126. When thereafter a civil action is called by the court for trial, and a jury is not waived, such proceedings shall be had in impaneling the trial jury as are prescribed in this Code. If the action be a criminal one, the jury shall be impaneled as prescribed by law regulating the procedure in criminal cases.

Proceeding in
forming jury
in justices' courts.

§ 3090. s 127. At the time appointed for a jury trial in justices' courts, the list of jurors summoned must be called. If a sufficient number of jurors are in attendance the justice may proceed to impanel the jury.

In criminal
case.

§ 3091. s 128. If the action is a criminal one, the jury must be impaneled as prescribed by law regulating the pro-

In civil cases.

cedure in criminal cases; if a civil one, as provided in this Code.

Manner of im-
paneling ju-
ries of inquest.

§ 3092. s 129. The manner of impaneling juries of inquest is prescribed in the provisions of the different statutes relating to such inquests.

TITLE IV.

MINISTERIAL OFFICERS OF COURTS OF JUSTICE.

CHAPTER I.

BAILIFFS OF THE SUPREME AND DISTRICT COURTS.

SECTION.

3093 Court may appoint.

SECTION.

3094 Tenure of office and duties.

§ 3093. s 132. The supreme court and the district courts may appoint as many bailiffs as the exigencies of the business in said courts may require.

§ 3094. s 133. The bailiffs shall hold their offices at the pleasure of the courts appointing them, and shall perform such duties as may be required of them by the court or any justice thereof.

CHAPTER II.

PHONOGRAPHIC REPORTERS.

SECTION.

3095 District judge may appoint; tenure of office, subject to order of court.

3096 How examined and appointed.

SECTION.

3097 Reporter's duty to attend court in person; oath of office.

3098 His report, how evidenced.

3099 Compensation, by whom to be paid; criminal cases.

§ 3095. s 135. The judge of each district court in this Territory may appoint a competent phonographic reporter to be known as the official reporter of such court, and to hold office during the pleasure of the judge making the appointment. Such reporter shall, upon the order of the court in a civil action or proceeding, and on the order of the court, made and entered upon its own motion, or on motion of the

May be appointed.

Subject to order of court.

prosecuting officer or the attorney for the defendant, in a criminal action or proceeding, take down in short-hand, all the testimony, the objections made, the rulings of the court, the exceptions taken, and oral instructions given, and if directed by the court, upon the request of either party, shall, within such reasonable time after the trial of such case, as the court may designate, write out the same in plain, legible long-hand and verify and file it with the clerk of the court in which the case was tried.

Who may be appointed.

§ 3096. s 136. No person shall be appointed official reporter, except upon satisfactory evidence of good moral character, and without being first examined as to his competency by at least three members of the bar practicing in said court, such members to be designated by the judge of said court. The committee of members of the bar so designated shall, upon the request of the judge of the said court, examine any person as to his qualifications whom said judge may wish to appoint as official reporter; and no person shall be appointed to such position upon whose qualifications such committee shall not have reported favorably; if he shall pass a satisfactory examination, the committee shall furnish him with a written certificate of that fact, signed by at least a majority of the members of the committee, which certificate shall be filed among the records of the court.

Duties of.

§ 3097. 137. The official reporter shall attend to the duties of his office in person, except when excused for good and sufficient reason by order of the court, which order shall be entered upon the minutes of the court. Employment in his professional capacity elsewhere shall not be deemed a good and sufficient reason for such excuse. When the official reporter has been excused in the manner provided in this section, the court may appoint an official reporter pro tempore, who shall perform the same duties and receive the same compensation during the term of his employment as the official reporter. The official reporter and the official reporter pro tempore shall take and subscribe an oath of office before entering upon their employment.

Must take oath of office.

Report of, certified, to be *prima facie* a correct statement.

§ 3098. s 138. The report of the official reporter, or official reporter pro tempore, duly appointed and sworn, when written out in long-hand writing, and certified as being a correct transcript of the testimony and proceedings of the case,

shall be *prima facie* a correct statement of such testimony *Proviso.* and proceedings.

§ 3099. s 139. The official reporter shall receive, as Fee of compensation for his services in civil actions and proceedings, for taking notes, a sum, to be fixed by the court, or a judge thereof, not exceeding ten dollars per day, and for transcription, a sum to be in like manner fixed, not exceeding fifteen cents per hundred words: *Provided*, That when said reporter *Proviso.* performs services in taking notes in more than one cause on the same day, the court or judge thereof shall apportion the per diem allowed between the several actions or proceedings in which such notes are taken. The shorthand notes so taken shall, immediately after the cause is submitted, be filed with the clerk; but for the purpose of writing out said notes, the reporter may withdraw the same for a reasonable time.

The reporter's fees for taking notes in civil cases shall be paid by the party in whose favor judgment is rendered, and shall be taxed up by the clerk of the court as costs against the party against whom judgment is rendered. In case of the failure of a jury to agree, the plaintiff must pay the reporter's fees, for time employed and transcription ordered by plaintiff, which have accrued up to the time of the discharge of the jury. In cases where a transcript has been ordered by the court, the fees for transcription must be paid by the respective parties to the action or proceeding, in equal proportions, or by such of them, and in such proportions as the court, in its discretion, may order; and no verdict or judgment shall be entered up, except the court shall otherwise order, until the reporter's fees are paid, or a sum equivalent thereto deposited with the clerk of the court therefor. In no case shall a transcript be paid for unless ordered either by the plaintiff or defendant, or by the court, nor shall the reporter be required in any civil case to transcribe his notes until the fees therefore be tendered him, or a sufficient amount to cover the same be deposited in court for that purpose. The party ordering the reporter to transcribe any portion of the testimony or proceedings must pay the fees of the reporter therefor. In criminal cases when the testimony has been taken down or transcribed upon the order of the court, the fees of the reporter shall be certified by the court to the auditor of public accounts, who shall draw his warrant Who must pay fees.

Proviso.

upon the Territorial treasurer for the amount so certified, and the same shall be paid out of the Territorial treasury; *Provided*, That if the defendant in a criminal action desires to have the reporter transcribe his notes taken on the trial, he must pay the reporter's fees therefor, or deposit a sum equivalent thereto, with the clerk of the court therefor, or the court must refuse to order the reporter to transcribe his notes.

TITLE V.

PERSONS SPECIALLY INVESTED WITH MINISTERIAL POWERS RELATING TO COURTS OF JUSTICE.

CHAPTER I.

ATTORNEYS AND COUNSELORS-AT-LAW.

SECTION.	SECTION.
3100 Who may be admitted.	3109 How attorney in an action may be changed.
3101 How applicant admitted.	3110 Notice of change.
3102 Order of admission.	3111 How the attorney to be appointed by a party in case of death, suspension or removal.
3103 Attorneys of a State or other Territories.	3112 Causes for removal or suspension.
3104 Oath of office.	3113 On conviction for felony, proceeding to be certified to supreme court.
3105 Clerk to keep roll of attorneys.	3114-3124 Proceedings for removal or suspension; judgment.
3106 Penalty for practicing without a license.	
3107 The duties of an attorney and counselor.	
3108 His authority.	

Who may be admitted as attorneys.

§ 3100. s 142. Any citizen of the United States, or person who has bona fide declared his or her intention to become one, in the manner required by law, of the age of twenty-one years, of good moral character, and who possesses the necessary qualifications of learning and ability, is entitled to admission as an attorney and counselor in all the courts of this Territory.

Qualifications of an attorney and counselor.

§ 3101. s 143. Every applicant for admission as an attorney and counselor, must produce satisfactory testimonials of good moral character, and, except as hereinafter pro-

vided, undergo a strict examination in open court as to his qualifications, by a committee appointed by the justices of the supreme court: *Provided*, That the several district courts of this Territory may admit applicants to practice as attorneys and counselors to their respective courts upon like testimonial and examination.

§ 3102. s 144. If, upon such examination in the su-^{license.}preme court, the applicant is found qualified, the court shall admit him as an attorney and counselor in all the courts of this Territory, and shall direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the clerk of the court, which certificate is his license.

§ 3103. s 145. The examination may be dispensed with ^{Attorneys of other State and Territory} in the case of a person who has been admitted as an attorney and counselor in the highest court of any State or other Territory, and his affidavit of such admission, showing the county, State or Territory, the name of the court, and the time when such admission was obtained, or his license showing the same, shall be deemed sufficient to entitle him to admission.

§ 3104. s 146. Every person, on his admission, must ^{oath, etc} take an oath to support the Constitution of the United States, and the laws of the United States and of this Territory, and to fathfully discharge the duties of an attorney and counselor-at-law to the best of his knowledge and ability.

§ 3105. s 147. Each clerk must keep a roll of attorneys ^{Clerk must keep a roll of attorneys.} and counselors admitted to practice by the court of which he is clerk, which roll must be signed by the person admitted before he receives his license. Upon receiving his license he shall pay to the clerk a fee of five dollars.

§ 3106. s 148. If any person shall practice law in any ^{Penalty for practicing without license.} court except a justice's or probate court, without having a license as attorney and counselor, he is guilty of a contempt of court.

§ 3107. s 149. It is the duty of an attorney and coun-^{General du ties.}selor:

1. To support the Constitution and the laws of the United States and of this Territory.
2. To maintain the respect due to the courts of justice and judicial officers.
3. To counsel or maintain no other actions, proceedings

or defenses than those which appear to him legal and just, excepting the defense of a person charged with a public offence.

4. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law.

5. To maintain inviolate the confidence, and, at every peril to himself, to preserve the secrets of his client.

6. To abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which he is charged.

7. Not to encourage either the commencement or continuance of an action or proceeding from any corrupt motive of passion or interest.

8. Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed.

Authority of
attorney.

§ 3108. s 150. An attorney and counselor has authority :

1. To bind his client in any of the steps of an action or proceeding, by his agreement filed with the clerk, or entered upon the minutes of the court, and not otherwise.

2. To receive money claimed by his client in an action or proceeding, during the pendency thereof, or after judgment, unless a revocation of his authority is filed, and upon payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

Change of at-
torney.

§ 3109. s 151. The attorney in an action or special proceeding may be charged at any time before judgment or final determination, as follows :

1. Upon his own consent, filed with the clerk or entered upon the minutes.

2. Upon the order of the court or judge thereof upon the application of the client, after notice to the attorney.

Notice of
change.

§ 3110. s 152. When an attorney is changed, as provided in the last preceding section, written notice of the change and of the substitution of a new attorney or of the appearance of the party in person must be given to the adverse party ; until then he must recognize the former attorney.

Death or re-
moval of at-
torney.

§ 3111. s 153. When an attorney dies or is removed or suspended or ceases to act as such, a party to an action or proceeding, for whom he was acting as attorney must before any further proceedings are had against him, be required by

the adverse party, by written notice, to appoint another attorney or to appear in person.

§ 3112. s 154. An attorney and counselor may be removed or suspended by the supreme court, and by the district courts for either of the following causes, arising after his admission to practice. Removal and suspension.

1. His conviction of felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence.

2. Wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in course of his profession, and any violation of the oath taken by him, or of his duties as such attorney and counselor.

3. Corruptly or wilfully and without authority appearing as attorney for a party to an action or proceeding.

4. Lending his name to be used as an attorney and counselor by another person who is not an attorney and counselor.

In all cases where an attorney is removed or suspended by a district court, the judgment or order of removal or suspension may be reviewed on appeal, by the supreme court.

§ 3113. s 155. In case of the conviction of an attorney or counselor of a felony or misdemeanor, involving moral turpitude, the clerk of the court in which such conviction is had, must within thirty days thereafter, transmit to the supreme court a certified copy of the record of conviction. Conviction of felony.

§ 3114. s 156. The proceedings to remove or suspend an attorney and counselor under the first subdivision of section 154, must be taken by the court on the receipt of a certified copy of the record of conviction. The proceedings under the second subdivision of the last named section may be taken by the court for matters within its knowledge, or may be taken upon the information of another. Proceedings for removal or suspension.

§ 3115. s 157. If the proceedings are upon the information of another, the accusation must be in writing. Accusation.

§ 3116. s 158. The accusation must state the matters charged, and be verified by the oath of some person, to the effect that the charges therein contained are true. Verification. Same.

§ 3117. s 159. After receiving the accusation, the court must, if in its opinion the case require it, make an order requiring the accused to appear and answer the accusation at a specified time in the same or subsequent term, and must Citation to answer.

cause a copy of the order and of the accusation to be served upon the accused within a prescribed time before the day appointed in the order.

Appearance. § 3118. s 160. The accused must appear at the time appointed in the order, and answer the accusation, unless for sufficient cause the court assign another day for that purpose: if he do not appear, the court may proceed and determine the accusation in his absence.

How to answer § 3119. s 161. The accused may answer to the accusation either by objecting to its sufficiency or denying it.

Demurrer. § 3120. s 162. If he object to the sufficiency of the accusation, the objection must be in writing, but need not be in any specific form: it being sufficient if it presents intelligibly the grounds of the objection. If he deny the accusation, the denial may be oral and without oath, and must be entered upon the minutes.

Answer. § 3121. s 163. If an objection to the sufficiency of the accusation be not sustained, the accuser must answer within such time as may be designated by the court.

Trial. § 3122. s 164. If the accused plead guilty, or refuse to answer the accusation, the court must proceed to judgment of removal or suspension. If he deny the matters charged, the court must, at such time as it may appoint, proceed to try the accusation.

Reference. § 3123. s 165. The court may, in its discretion, order a reference to a committee to take depositions in the matter.

Judgment. § 3124. s 166. Upon conviction, in cases arising under the first subdivision of section 154, the judgment of the court must be that the name of the party must be stricken from the roll of attorneys and counselors of the court, and that he be precluded from practicing as such attorney or counselor in all the courts of this Territory, and upon conviction in cases under the other subdivisions of that section, the judgment of the court may be according to the gravity of the offence charged—deprivation of the right to practice as an attorney or counselor in the courts of this Territory, permanently or for a limited period.

CHAPTER II.

OTHER PERSONS INVESTED WITH SUCH POWERS.

§ 3125. s 170. The appointment, powers and duties of receivers, executors, administrators, and guardians, are provided for and prescribed in the laws of the Territory relating to those subjects.

Appointment, powers and duties of receivers, executors, etc.

(ACT) PART II.

CIVIL ACTIONS.

TITLE I.

OF THE FORM OF CIVIL ACTION.

SECTION.

3126 One form of civil action only.
3127 Parties, how designated.

SECTION.

3128 Jury trial may be ordered of special issues not made by pleadings, or when such trial discretionary.

§ 3126. s 172. There is in this Territory but one form of civil action for the enforcement or protection of private rights, and the redress or prevention of private wrongs.

One form of civil action only.

§ 3127. s 173. In such action the party complaining is known as the plaintiff, and the adverse party as the defendant.

Parties to action, how designated

§ 3128. s 174. In a case where neither party can, as of right, require a trial by jury, of an issue of fact arising upon the pleadings, or where a question of fact, not in issue upon the pleadings, is to be tried, an order for the trial thereof by a jury may be made, stating distinctly and plainly, the question of fact to be tried. Such an order is the only authority necessary for the trial.

Special issues not made by pleadings, how tried

TITLE II.

OF THE TIME OF COMMENCING ACTIONS.

CHAPTER I.

THE TIME OF COMMENCING ACTIONS IN GENERAL.

SECTION.

3129 Commencement of civil actions.

Commence-
ment of civil
actions

§ 3129. s 175. Civil actions can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, except where in special cases, a different limitation is prescribed by statute.

CHAPTER II.

THE TIME OF COMMENCING ACTIONS FOR THE RECOVERY OF REAL PROPERTY.

SECTION.

3130 When the people will not sue.
3131 Seizin within seven years when necessary in action for real property.
3132 Such seizin, when necessary to an action or defence arising out of title to or rents to real property.
3133 Possession when presumed; occupation deemed under legal title, unless adverse.
3134 Occupation under written instrument or judgment, when deemed adverse.

SECTION.

3135 What constitutes adverse possession under written instrument or judgment.
3136 Premises actually occupied under claim of title deemed to be held adversely.
3137 What constitutes adverse possession under claim of title not written.
3138 Relation of landlord and tenant as affecting adverse possession.
3139 Right of possession not affected by descent cast.
3140 Certain disabilities excluded from time to commence action.

When the
people will not
sue

§ 3130. s 178. The people of this Territory will not sue any person for or in respect to any real property, or the issues and profits thereof, by reason of the right or title of the people to the same, unless:

1. Such right or title shall have accrued within seven years before any action or other proceedings for the same shall be commenced; or,

2. The people, or those from whom they claim, shall have received the rents and profits of such real property, or some part thereof, within the space of seven years.

§ 3131. s 179. No action for the recovery of real prop- Seized within seven years, when necessary in action for real property
erty, or for the recovery of the possession thereof, shall be maintained, unless it appears that the plaintiff, his ancestor, grantor or predecessor was seized or possessed of the premises in question, within seven years before the commencement of such action; and this section includes possessory rights to lands and mining claims.

§ 3132. s 180. No cause of action, or defense to an such seized when necessary in action or defense arising out of title to or rent of real property
action, founded upon the title to real property, or to rents or profits out of the same, shall be effectual, unless it appear that the person prosecuting the action, or making the defense or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor, or grantor of such person was seized or possessed of the premises in question, within seven years before the commencement of the act, in respect to which such action is prosecuted or defense made.

§ 3133. s 181. In every action for the recovery of real Possession, when presumed.
property, or the possession thereof, the person establishing a legal title to the property shall be presumed to have been possessed thereof, within the time required by law, and the occupation of the property by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and Occupation deemed under legal title, unless adverse.
possessed adversely to such legal title for seven years before the commencement of the action.

§ 3134. s 182. Whenever it shall appear that the occu- Occupation under written instrument or judgment, when deemed adverse.
pant or those under whom he claims, entered into the possession of the property, under claim of title exclusive of other right, founding such claim upon a written instrument, as being a conveyance of the property in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the property included in such instrument, decree or judgment, or of some part of the property under such claim, for seven years, the property so included shall be deemed to have been held adversely, except that when the property so included consists of a tract

divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

What constitutes adverse possession under written instrument or judgment

§ 3135. 183. For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases:

1. Where it has been usually cultivated or improved.
2. Where it has been protected by a substantial inclosure.
3. Where although not inclosed it has been used for the supply of fuel, or of fencing timber, for the purposes of husbandry, or for the use of pasturage, or for the ordinary use of the occupant.

4. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared, or not enclosed according to the usual course and custom of the adjoining country shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Premises actually occupied under claim of title deemed to be held adversely

§ 3136. § 184. Where it appears that there has been an actual continued occupation of land under claim of title, exclusive of any other right, but not founded upon a written instrument, judgment or decree, the land so actually occupied and no other shall be deemed to have been held adversely.

What constitutes adverse possession under claim of title not written

§ 3137. § 185. For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, judgment or decree, land is deemed to have been possessed and occupied in the following cases only:

1. Where it has been protected by a substantial enclosure.
2. Where it has been usually cultivated or improved.
3. Where labor or money has been expended upon dams, canals, embankments, aqueducts or otherwise, for the purpose of irrigating said lands, amounting to the sum of five dollars per acre; *Provided, however,* That in no case shall adverse possession be considered established under the provisions of any section or sections of this Code, unless it shall be shown that the land has been occupied and claimed for the period of seven years continuously, and the party or persons, their predecessors and grantors have paid all the

taxes, Territorial, county or municipal, which have been levied and assessed upon such land according to law.

§ 3138. s 186. When the relation of landlord and tenant has existed between any persons, the possession of the tenant is deemed the possession of the landlord until the expiration of seven years from the termination of the tenancy, or where there has been no written lease until the expiration of seven years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord; but such presumption cannot be made after the periods herein limited.

Relation of landlord and tenant as affecting adverse possession.

§ 3139. s 187. The right of a person to the possession of real property is not impaired or affected by a decent cast in consequence of the death of a person in possession of such property.

Right of possessions not affected by decent cast.

§ 3140. s 188. If a person entitled to commence an action for the recovery of real property, or for the recovery of the possession thereof, or to make any entry or defense founded on the title to real property, or to rents or services, out of the same, be at the time such title shall first descend, or accrue, either:

Certain disabilities excluded from time to commence action.

1. Within age of majority; or,
2. Insane; or,
3. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offence, for a term less than for life; or, .

4. A married woman, and her husband be a necessary party with her in commencing such action or making such entry or defense; the time during which such disability continues is not deemed any portion of the time in this chapter limited for the commencement of such actions, or the making of such entry or defense, but such action may be commenced, or entry or defense made within the period of two years after such disability shall cease, or after the death of the person entitled, who shall die under such disability, but such action shall not be commenced, or entry or defense made after that period.

Same.

CHAPTER III.

THE TIME OF COMMENCING ACTIONS OTHER THAN FOR THE RECOVERY OF REAL PROPERTY.

SECTION.

- 3141 Periods of limitations prescribed
 3142 Within five years.
 3143 Within four years.
 3144 Within three years.
 3145 Within two years.
 3146 Within one year.
 3147 Within six months.
 3148 Actions against county within one year after rejection.
 3149 When cause of action accrued on mutual account.

SECTION.

- 3150 Actions for relief not before provided for.
 3151 Actions by people subject to same limitations.
 3152 Action to redeem mortgage barred by seven years adverse possession.
 3153 Action to redeem where there are two mortgages.
 3154 No limitation in what cases.

Periods of
 limitations
 prescribed.

§ 3141. s 192. The periods prescribed for the commencement of actions other than for the recovery of real property, are as follows:

Within five
 years

§ 3142. s 193. Within five years:

1. An action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States.

2. An action for the mesne profits of real property.

Within four
 years.

§ 3143. s 194. Within four years:

An action upon any contract, obligation or liability, founded upon an instrument of writing, except those mentioned in the preceding section.

Within three
 years.

§ 3144. s 195. Within three years:

1. An action for a liability created by statute, other than a penalty or forfeiture.

2. An action for trespass upon real property.

3. An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property.

4. An action for relief on the ground of fraud or mistake. The cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party, of the facts constituting the fraud or mistake.

§ 3145. s 196. Within two years:

1. An action upon a contract, obligation or liability, ^{Within two years.} not founded upon an instrument of writing; also on an open ^{March 11, 1886.} account for goods, wares and merchandise, and for any article charged in a store account; *Provided*, That action in said cases may be commenced at any time within two years after the last charge is made or the last payment is received.

2. An action against a marshal, sheriff, coroner or constable upon a liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution; *Provided*, That such action may be commenced within two years after the expiration of the term of his office. But this section shall not apply to an action for an escape.

3. An action to recover damages for the death of one caused by the wrongful act or neglect of another.

§ 3146. s 197. Within one year:

^{Within one year.}

1. An action upon a statute for a penalty or forfeiture where the action is given to an individual, or to an individual and the people, except when the statute imposing it prescribes a different limitation.

2. An action upon a statute, or upon an undertaking in a criminal action for a forfeiture or penalty to the people of the Territory.

3. An action for libel, slander, assault, battery, false imprisonment or seduction.

4. An action against a marshal, sheriff or other officer, for the escape of a prisoner arrested or imprisoned upon either civil or criminal process.

5. An action against a municipal corporation for damages or injuries to property caused by a mob or riot.

§ 3147. 198. Within six months; an action against an ^{Within six months.} officer, or officers *de facto*:

1. To recover any goods, wares, merchandise or other property, seized by any such officer in his official capacity, as tax collector, or to recover the price or value of any goods, wares, merchandise, or other personal property so seized, or for damages for the seizure, detention, sale of, or injury to any goods, wares, merchandise, or other personal property seized, or for damages done to any person or property in making any such seizure.

2. For money paid to any such officer under protest, or

seized by such officer in his official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

Same.

§ 3148. s 199. Actions on claims against a county, which have been rejected by the county court, must be commenced within one year after the first rejection thereof by such court.

Where cause of action accrues on mutual account.

§ 3149. s 200. In an action brought to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands between parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

Actions for relief not hereinbefore provided for.

§ 3150. s 201. An action for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued.

Actions by the people subject to the limitations of this Chapter

§ 3151. s 202. The limitations prescribed in this Chapter shall apply to actions brought in the name of the people of the Territory, or for the benefit of the people of the Territory, in the same manner as to actions brought by private persons.

Actions to redeem a mortgage without account of rents and profits.

§ 3152. s 203. An action to redeem a mortgage of real property with or without an account of rents and profits, may be brought by the mortgagor, or those claiming under him, against the mortgagee in possession, or those claiming under him, unless he or they have continuously maintained an adverse possession of the mortgaged premises for seven years after breach of some condition of the mortgage.

Same, when there are two or more such mortgages.

§ 3153. s 204. If there is more than one such mortgagor, or more than one person claiming under a mortgagor, some of whom are not entitled to maintain such an action, under the provisions of this Chapter, any one of them, who is entitled to maintain such an action, may redeem therein a divided or undivided part of the mortgaged premises, according as his interest may appear, and have an accounting for a part of the rents and profits, proportionate to his interest in the mortgaged premises, on payment of a part of the mortgage money, bearing the same proportion to the whole of such money as the value of his divided or undivided interest in the premises bears to the whole of such premises.

No limitation.

§ 3154. s 205. To actions brought to recover money or other property deposited with any bank, banker, trust company, or savings or loan society, there is no limitation.

CHAPTER IV.

GENERAL PROVISIONS AS TO THE TIME OF COMMENCING ACTIONS.

SECTION.	SECTION.
3155 When action is commenced.	3162 Disability must exist when right of action accrued.
3156 Exception where defendant is out of the Territory.	3163 When two or more disabilities exist, etc.
3157 Exceptions as to persons under disability.	3164 This chapter not applicable to actions against directors, etc.; limitations in such cases prescribed.
3158 Provisions where persons entitled dies before limitation expires.	3165 Acknowledgment or new promise must be in writing.
3159 In suits by aliens, time of war to be deducted.	3166 Limitation laws of other States and Territories, effect of.
3160 Provision where judgment has been reversed.	3167 Existing causes of action not affected.
3161 Provision where action is stayed by injunction.	3168 Word "action" construed how.

§ 3155. s 208. An action is commenced, within the meaning of this title, when the complaint is filed. When action is commenced.

§ 3156. s 209. If when the cause of action accrues against a person, he is out of the Territory, the action may be commenced within the term herein limited, after his return to the Territory; and if after the cause of the action accrues he depart from the Territory, the time of his absence is not part of the time limited for the commencement of the action. Exception where defendant is out of the Territory.

§ 3157. s 210. If a person entitled to bring an action other than for the recovery of real property, be at the time the cause of action accrued, either: Exception, as to persons under disability.

1. Within the age of majority; or,
2. Insane; or,
3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court, for a term less than for life; or,

4. A married woman, and her husband be a necessary party with her in commencing such action. The time of such disability is not a part of the time limited for the commencement of the action.

§ 3158. s 211. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives after the ex- Provision where person entitled dies before limitation expires.

piration of that time, and within six months from his death. If a person against whom an action may be brought, die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced against his representatives after the expiration of that time, and within one year after issuing of letters testamentary or of administration.

In suits by
aliens time of
war to be de-
ducted.

§ 3159. s 212. When a person is an alien subject, or citizen of a country at war with the United States, the time of the continuance of the war is not part of the period limited for the commencement of the action.

Provision
where judg-
ment has been
reversed

§ 3160. s 213. If an action is commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal, the plaintiff, or if he die and the cause of action survive, his heirs or personal representatives, may commence a new action within one year after the reversal.

Provision
where action
is stayed by
injunction.

§ 3161. s 214. When the commencement of an action is stayed by injunction, or a statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

Disability
must exist
when right of
action ac-
crued

§ 3162. s 215. No person can avail himself of a disability, unless it existed when his right of action accrued.

When two or
more disabili-
ties exist, etc.

§ 3163. s 216. When two or more disabilities co-exist at the time the right of action accrues, the limitation does not attach until they are removed.

This chapter
not applicable
to actions
against
directors, etc.
limitations in
such cases
prescribed.

§ 3164. s 217. This Title does not affect actions against directors or stockholders of a corporation, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery, by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or the liability was created.

Acknowledg-
ment or new
promise must
be in writing.

§ 3165. s 218. No acknowledgement or promise is sufficient evidence of a new or continuing contract, by which to take the case out of the operations of this Title, unless the same is contained in some writing signed by the party to be charged thereby.

Limitation
laws of other
States and
Territories,
effect of.

§ 3166. s 219. When a cause of action has arisen in another State or Territory, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action

thereon shall not be maintained against him in this Territory, except in favor of one who has been a citizen of this Territory, and who has held the cause of action from the time it accrued.

§ 3167. s 220. This Title does not extend to actions Existing causes of action not affected. already commenced, nor to cases where the time prescribed in any existing statute for acquiring a right or barring a remedy has fully run, but the laws now in force are applicable to such actions and cases, and are repealed subject to the provisions of this section.

§ 3168. s 221. The word action, as used in this Title, Word "action" construed, how. is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.

TITLE III.

OF THE PARTIES TO CIVIL ACTIONS.

SECTION.	SECTION.
3169 Action to be in name of party in interest.	3183 Claimants under a common source of title may unite.
3170 Assignment of thing in action not to prejudice defense.	3184 Parties in interest, when to be joined; when one or more may sue or defend for the whole.
3171 Executor, trustee may sue without joining the persons beneficially interested.	3185 Plaintiff may sue in one action the different parties to commercial paper.
3172 Married woman as party.	3186 Tenants in common, etc., may sever in bringing or defending actions.
3173 Wife may defend when.	3187 Actions, when not to abate; substitution.
3174 Infant, etc., to appear by guardian.	3188 Another person may be substituted for the defendant.
3175 Guardian, how appointed.	3189 Actions against conflicting claimants; substitution.
3176 Unmarried female may sue for her own seduction, when.	3190 Intervention, when and how.
3177 Father, etc., may sue for seduction of daughter, etc.	3191 Associates may be sued by name of association.
3178 Who may sue for injury and death of child.	3192 Courts, when to decide controversy or to order other parties to be brought in.
3179 When representative may sue; damages.	
3180 Who may be joined as plaintiff.	
3181 Who may be joined as defendants.	
3182 Defendants in actions to determine adverse claims.	

§ 3169. s 224. Every action must be prosecuted in the name of the real party in interest, except as provided in section 226. Action to be in name of party in interest

Assignment of thing in action not to prejudice defense.

§ 3170. s 225. In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any set off or other defense, existing at the time of, or before notice of the assignment; but this section does not apply to a negotiable instrument transferred in good faith and upon good consideration, before maturity.

Executor, trustee, may sue without joining the persons beneficially interested.

§ 3171. s 226. An executor, or administrator, or trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person or persons for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this section, must be construed to include a person with whom, or in whose name, a contract is made for the benefit of another.

Married woman as party.

§ 3172. s 227. When a married woman is a party, her husband must be joined with her; except:

1. When the action concerns her separate property, or her right or claim to the homestead property, she may sue or be sued alone.

2. When the action is between herself and her husband, she may sue or be sued alone.

3. When she is living separate and apart from her husband, by reason of his desertion of her, or by agreement in writing entered into between them, she may sue or be sued alone.

Wife may defend, when.

§ 3173. s 228. If a husband and wife be sued together, the wife may defend for her own right, and if the husband neglect to defend, she may defend for his right also.

Infant, etc., to appear by guardian.

§ 3174. s 229. When an infant, or an insane, or incompetent person is a party, he must appear either by his general guardian, or by a guardian *ad litem* appointed by the court, or judge thereof, in which the action is pending in each case. A guardian *ad litem* may be appointed in any case, when it is deemed by the court in which the action or proceeding is prosecuted, or by the judge thereof, expedient to represent the infant, insane or incompetent person in the action or proceeding, notwithstanding he may have a general guardian and may have appeared by him.

Guardain, how appointed

§ 3175. s 230. When a guardian *ad litem* is appointed by a court, or the judge thereof, he must be appointed as follows:

1. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years, or if under

that age, upon the application of a relative or friend of the infant.

2. When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within ten days after the service of the summons, or if under that age, or if he neglect so to apply, then upon the application of a relative or friend of the infant, or of any other party to the action.

3. When an insane or incompetent person is party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding.

§ 3176. § 231. An unmarried female under twenty years of age at the time of her seduction may prosecute, as plaintiff, an action therefor, and may recover therein such damages, pecuniary or exemplary, as are assessed in her favor.

§ 3177. § 232. A father, or in case of his death or desertion of his family, the mother may prosecute as plaintiff for the seduction of the daughter, who at the time of her seduction is under the age of majority; and the guardian for the seduction of the ward, who is at the time of her seduction under the age of majority, though the daughter or the ward be not living with or in the service of the plaintiff at the time of the seduction, or afterwards, and there be no loss of service.

§ 3178. § 233. A father, or in case of his death or desertion of his family, the mother may maintain an action for the death or injury of a minor child; and a guardian for the injury or death of his ward, when such injury or death is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or death, or if such person be employed by another person who is responsible for his conduct, also against such other person.

§ 3179. § 234. When the death of a person not being a minor is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death, or if such person be employed by another person who is responsible for his conduct, then also against such other person. In every action under this and the preceding section, such damages may be given as under all the circumstances of the case may be just.

Who may be joined as plaintiff

§ 3180. s 235. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this Code.

Who may be joined as defendants

§ 3181. s 236. Any person may be made a defendant, who has or claims an interest in the controversy, adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein. And in an action to determine the title or right of possession to real property which, at the time of the commencement of the action, is in the possession of a tenant, the landlord may be joined as a party defendant.

Defendants in action to determine adverse claims

§ 3182. s 237. In an action brought by a person out of possession of real property, to determine an adverse claim of an interest or estate therein, the person making such adverse claim and persons in possession may be joined as defendants, and if the judgment be for the plaintiff, he may have a writ for the possession of the premises as against the defendants in the action, against whom judgment has passed.

Claimants under a common source of title may unite

§ 3183. s 238. Any two or more persons claiming any estate or interest in lands under a common source of title, whether holding as tenants in common, joint tenants, co-parceners, or in severalty, may unite in an action against any person claiming an adverse estate or interest therein for the purpose of determining such adverse claim, or of establishing such common source of title, or of declaring the same to be held in trust, or of removing a cloud upon the same.

Parties in interest, when to be joined

§ 3184. s 239. Of the parties to the action, those who are united in interest must be joined as plaintiffs, or defendants; but if the consent of any one, who should have been joined as plaintiff, cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

When one or more may sue or defend for the whole

Plaintiff may sue in one action the different parties to commercial paper

§ 3185. s 240. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all, or any of them, be included in the same action, at the option of the plaintiff.

§ 3186. s 241. All persons holding as tenants in common, joint tenants, or coparceners, or any number less than all, may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of such party.

Tenants in common, etc., may severally bring or defend actions.

§ 3187. s 242. An action or proceeding does not abate by the death or any disability of a party, or by the transfer of any interest therein, if the cause of action or proceeding survive or continue. In case of the death, or any disability, of a party, the court, on motion, may allow the action or proceeding to be continued by or against his representative or successor in interest. In the case of any other transfer of interest, the action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding.

Action, when not to abate. Substitution.

§ 3188. s 243. A defendant against whom an action to recover upon a contract, or an action of ejectment, or an action for specific personal property is pending, may, at any time before answer, upon affidavit that a person not a party to the action makes against him, and without any collusion with him, a demand upon such contract, or for such property, upon notice to such person and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount claimed on the contract, or delivering the property, or its value, to such person as the court may direct, and the court may in its discretion make the order.

Another person may be substituted for the defendant.

§ 3189. s 244. Whenever conflicting claims are or may be made upon a person for or relating to personal property, or the performance of an obligation, or any portion thereof, such person may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims among themselves. The order of substitution may be made, and the action of interpleader may be maintained, and the applicant or plaintiff be discharged from liability to all or any of the conflicting claimants, although their titles or claims have not a common origin, or are not identical, but are adverse to and independent of one another.

Actions against conflicting claimants.

Substitution

§ 3190. s 245. Any person may, before the trial, intervene in an action or proceeding, who has an interest in the

Intervention, when and how

matter in litigation, in the success of either of the parties, or an interest against both. An intervention takes place when a third party is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff, in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff or by demanding anything adversely to both the plaintiff and the defendant, and is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court, and served upon the parties to the action or proceeding, who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint.

Associates
may be sued
by name of
association

§ 3191. s 246. When two or more persons associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates, in the same manner as if all had been named defendants, and had been sued upon their joint liability.

Court when to
decide
controversy or
to order other
parties to be
brought in

§ 3192. s 247. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court must then order them to be brought in, and thereupon the party directed by the court must serve a copy of the summons in the action, and the order aforesaid in like manner of service of the original summons, upon each of the parties ordered to be brought in, who shall have ten days, or such time as the court may order, after service, in which to appear and plead; and in case such party fail to appear and plead within the time aforesaid, the court may cause his default to be entered, and proceed as in other cases of default, or may make such other order as the condition of the action and justice shall require. And when, in an action for the recovery of real or personal property, a person not a party to the action, but having an interest in the subject thereof, makes application to the court to be made a party, it may order him to be brought in by the proper amendment.

TITLE IV.

OF THE PLACE OF TRIAL OF CIVIL ACTION.

SECTION.	SECTION.
3193 Certain actions to be tried where the subject of some part thereof is situated.	3197 Actions may be tried in any judicial district, unless, when.
3194 Other actions where the cause or some part thereof arose.	3198 Place of trial may be changed in certain cases.
3195 Place of trial of actions against counties.	3199 When judge is disqualified, cause to be transferred.
3196 Other actions according to the residence of the parties.	3200 Papers to be transmitted; costs, etc.; jurisdiction of.
	3201 Proceedings after judgment in certain cases transferred.

§ 3193. s 250. Actions for the following causes must be tried in the judicial district in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial, as provided in this Code. Certain actions to be tried where the subject or some part thereof is situated

1. For the recovery of real property, or of an estate or interest therein, or for the determination, in any form, of such right or interest, and for injuries to real property.

2. For the partition of real property.

3. For the foreclosure of a mortgage of real property.

Where the real property is situated partly in one judicial district and partly in another, the plaintiff may select either of the judicial districts, and the district so selected is the proper district for the trial of such action.

§ 3194. s 251. Actions for the following causes shall be tried in the judicial district where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial: Other actions where the cause or some part thereof arose

1. For the recovery of a penalty or forfeiture imposed by statute; except, that when it is imposed for an offence committed on a lake, river, or other stream of water situated in two or more districts, the action may be brought in any district bordering on such lake, river or stream, and opposite to the place where the offence was committed.

2. Against a public officer or person specially appointed to execute his duties, for an act done by him in virtue of his

office; or against a person who, by his command or in his aid, does anything touching the duties of such officer.

Place of trial
of action
against
counties

§ 3195. s 252. An action against a county, or between counties, may be commenced and tried in the judicial district where such county or counties are situated; unless such action is between counties situated in different judicial districts, in which case it may be commenced and tried in either district in which one of the counties is situated.

Other actions
according to
the residence
of the parties

§ 3196. s 253. In all other cases the action must be tried in the judicial district in which the defendants, or some of them, reside at the commencement of the action: or, if none of the defendants reside in the Territory, or, if residing in this Territory, the judicial district in which they reside is unknown to the plaintiff, the same may be tried in any judicial district the plaintiff may designate in his complaint; and if the defendant is about to depart from the Territory, such action may be tried in any judicial district where either of the parties reside or service is had; subject, however, to the power of the court to change the place of trial as provided in this Code.

Action may be
tried in any
judicial dis-
trict, unless,
when

§ 3197. s 254. If the judicial district in which the action is commenced is not the proper judicial district for the trial thereof, the action may, notwithstanding, be tried therein, unless the defendant, at the time he appears and answers or demurs, files an affidavit of merits, and demands, in writing, that the trial be had in the proper judicial district.

Place of trial
may be changed
in certain
cases

§ 3198. s 255. The court may, on motion, change the place of trial in the following cases:

1. When the judicial district designated in the complaint is not the proper district.
2. When there is reason to believe that an impartial trial cannot be had therein.
3. When the convenience of witnesses and the ends of justice would be promoted by the change.
4. When from any cause the judge is disqualified from acting.

When judge is
disqualified
cause to be
transferred

§ 3199. s 256. If an action or proceeding is commenced or pending in a court, and the judge or justice thereof is disqualified from acting as such, or if for any cause the court orders the place of trial to be changed, it must be transferred for trial to a court the parties may agree upon by stipulation in writing, or made in open court and entered in the

minutes; or if they do not so agree, then to the nearest court, where the like objection or cause for making the order does not exist, as follows:

1. If in the district court, to another district court.
2. If in the probate court, to the probate court of an adjoining county.
3. If in a justice's court, to another justice's court in the same county.

§ 3200. s 257. When an order is made transferring an action or proceeding for trial, the clerk of the court, or justice of the peace, must transmit the pleadings and papers therein to the clerk or justice of the court to which it is transferred. The costs and fees thereof, and of filing the papers anew, must be paid by the party at whose instance the order was made. The court to which an action or proceeding is transferred has and exercises over the same in the like jurisdiction as if it had been originally commenced therein.

§ 3201. s 258. When an action or proceeding affecting the title to, or possession of real estate has been brought in or transferred to any district court, other than the district in which the real estate, or some portion of it is situated, the clerk of such court must, after final judgment therein, certify, under his seal of office, and transmit to the district court of the district in which the real estate affected by the action is situated, a copy of the judgment. The clerk receiving such copy must file, docket, and record the judgment in the records of the court, briefly designating it as a judgment transferred from——court (naming the proper court.)

TITLE V.

OF THE MANNER OF COMMENCING CIVIL ACTIONS.

SECTION.

- 3202 Action, how commenced.
 3203 Indorsement of complaint: summons; waiver of summons.
 3204 Summons, how issued, directed and what to contain.
 3205 Alias summons.
 3206 Constructive notice of pendency of action, how given.
 3207 Summons, how served and returned.
 3208 Summons, upon whom served.
 3209 Objections to summons, how taken.

SECTION.

- 3210 Publication when defendant is absent from the Territory, concealed, or a foreign corporation having no agent, etc.
 3211 Service by publication made.
 3212 Proceedings where there are several defendants and part only are served.
 3213 Proof of service, how made.
 3214 Jurisdiction, when acquired; appearance.

Action, how
commenced

§ 3202. s 262. Civil actions in the courts of this Territory are commenced by filing a complaint.

Indorsement
of complaint
Summons

§ 3203. s 263. The clerk must endorse on the complaint the day, month and year that it is filed, and at any time within one year thereafter, the plaintiff may have a summons issued; and if the action be brought against two or more defendants, who reside in different judicial districts or in different counties within the same or different judicial districts within the Territory, the plaintiff may have a summons issued for each of such counties at the same time. But at any time within one year after the complaint is filed, the defendant may, in writing, or by appearing and answering or demurring, waive the issuing of summons; or, if the action be brought upon a joint contract of two or more defendants, and one of them has appeared within the year, the other or others may be served or appear after the year, at any time before trial.

Waiver of
summons

Summons,
how issued,
directed, and
what to
contain.

§ 3204. s 264. The summons must be directed to the defendant, signed by the clerk, and issued under the seal of the court, and must contain:

1. The names of the parties to the action, the court in which it is brought, and the judicial district in which the complaint is filed.

2. A statement of the nature of the action in general terms.

3. A direction that the defendant appear and answer the complaint within ten days, if the summons is served within the county in which the district court, in which the action is brought, is held; within twenty days, if served out of said county, but in the district in which the action is brought, and within forty days if served elsewhere.

4. In an action arising on contract, for the recovery of money or damages only, a notice that unless the defendant so appears and answers, the plaintiff will take judgment for the sum demanded in the complaint, (stating it.)

5. In other actions, a notice that unless defendant so appears and answers, the plaintiff will apply to the court for the relief demanded in the complaint. The name of the plaintiff's attorney must be indorsed on the summons.

§ 3205. s 265. If the summons is returned without being served on any or all of the defendants, the clerk, upon the demand of the plaintiff, may issue an alias summons in the same form as the original. Alias summons.

§ 3206. s 266. In an action affecting the title or the right of possession of real property, the plaintiff at the time of filing the complaint, and the defendant at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may file for record with the recorder of the county in which the property or some part thereof is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action or defense, and a description of the property in that county affected thereby. From the time of filing such notice for record only shall a purchaser or incumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names. Constructive notice of pendency of action, how given.

§ 3207. s 267. The summons must be served by the United States marshal, or by the sheriff of the county where the defendant is found and served unless the court or judge thereof shall otherwise order in any particular case. A certificate copy of the complaint must be served with the summons, unless two or more defendants are residents of the same judicial district, in which case a copy of the complaint need only be served upon one of such defendants. When the summons is served by the marshal or sheriff, it must be returned, with his certificate of his service, and of the service Summons, how served and returned.

of any copy of the complaint, where such copy is served, to the office of the clerk from which it issued. When it is served by any other person, it must be returned to the same place, with an affidavit of such person of its service, and of the service of a copy of the complaint, where such copy is served.

Summons,
upon whom
served.

§ 3208. s 268. The summons must be served by delivering a copy thereof as follows:

1. If the suit be against any incorporated city, service must be made on the mayor or recorder.

2. If the suit be against any county, service must be made on the probate judge or clerk of the county court.

3. If the suit be against a school district, service must be made on the trustees or any two of them.

4. If the suit be against any irrigation company, service must be made on the superintendent or water master.

5. If the suit be against any other corporate body, incorporated under the laws of the Territory, service must be made on the president or chief officer, or its secretary, or clerk, if such officer, secretary or clerk can be found within the district, and if not so found, then on any agent of said company or person having in his charge or custody any property of such company. When the defendant is a foreign corporation and has an acknowledged agent in this Territory, service may be made on such agent, or if no such agent is found, on any person in its employ, or who has any of its property in charge.

6. If against a minor under the age of fourteen years, on such minor personally, and also on his father, mother or guardian, or if such minor has no such father, mother or guardian in the Territory, then on any person having the care and control of such minor, or with whom he resides, or in whose service he is employed.

7. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, on such guardian.

8. In all other cases, on the defendant personally, or by leaving a certified copy thereof at his usual place of abode, with some suitable person, of at least the age of fourteen years.

§ 3209. s 269. Objections to the summons, or the service thereof, or proof of service thereof, in the particulars

named in the preceding section, may be taken by motion on behalf of defendant, particularly specifying the objections, accompanied by the certificate of counsel that in his opinion the objection is well taken; after the filing and serving of such motion and certificate and serving of such motion and certificate, the time for pleading shall be suspended until such objection is passed upon by the court.

Object on to summons, how taken.

§ 3210. s 270. Where the person on whom the service is to be made resides out of the Territory, or has departed from the Territory, or cannot after due diligence be found within the Territory, or conceals himself to avoid the service of summons, or being a corporation, or joint stock association, cannot be served as provided in the preceding section, and the fact shall appear by affidavit to the satisfaction of the court or a judge thereof, and it also appears by such affidavit or by the verified complaint on file that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such court or judge may grant an order that the service be made by the publication of the summons.

Publication, when defendant is absent from the Territory, concealed, or a foreign corporation having no agent, etc.

§ 3211. s 271. The order must direct the publication to be made in a newspaper, to be designated, as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week; but publication against a defendant residing out of the Territory, or absent therefrom, must not be less than one month. In case of publication, when the residence of a non-resident or absent defendant is known, the court or judge must direct a copy of the summons and complaint to be forthwith deposited (post-paid) in the post office, directed to the person to be served, at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint out of the Territory is equivalent to publication and deposit in the post office; and in either case the service of the summons is complete at the expiration of the time prescribed by the order for publication.

Service by publication made

§ 3212. s 272. When the action is against two or more defendants jointly or severally liable on a contract, and the summons is served on one or more, but not on all of them, the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.

Proceedings where there are several defendants and part only are served.

Proof of
service, how
made.

§ 3213. s 273. Proof of the service of summons and complaint must be as follows:

- 1. If served by the United States marshal or sheriff, his certificate thereof.
- 2. If by any other person, his affidavit thereof; or,
- 3. In case of publication, the affidavit of the printer or his foreman, or principal clerk, showing the same; and an affidavit of the deposit of a copy of the summons in the post office, if the same has been deposited; or,
- 4. The written admission of the defendant. In case of service otherwise than by publication, the certificate or affidavit must state the time and place of service.

Jurisdiction
when
acquired.
Appearance.

§ 3214. s 274. From the time of the service of the summons and of a copy of the complaint in a civil action, where service of a copy of the complaint is required or of the completion of the publication when service by publication is ordered, the court is deemed to have acquired jurisdiction of the parties, and to have control of all the subsequent proceedings. The voluntary appearance of a defendant is equivalent to personal service of the summons and copy of the complaint upon him.

TITLE VI.

OF THE PLEADINGS IN CIVIL ACTIONS.

CHAPTER I.

THE PLEADINGS IN GENERAL.

SECTION.

- 3215 Definition of pleadings.
- 3216 This Code prescribes the forms and rules of pleadings.

SECTION.

- 3217 What pleadings are allowed.

Definition of
pleadings.

§ 3215. s 278. The pleadings are the formal allegations by the parties of their respective claims and defenses for the judgment of the court.

§ 3216. s 279. The forms of pleading in civil actions and the rules by which the sufficiency of the pleadings is to be determined, are those prescribed in this Code.

This Code prescribes the forms and rules of pleadings.

§ 3217. s 280. The only pleadings allowed on the part of the plaintiff are:

What pleadings are allowed.

1. The complaint.
2. The demurrer to the answer.

And on the part of the defendant:

1. The demurrer to the complaint.
2. The answer.

CHAPTER II.

THE COMPLAINT.

SECTION.

3218 Complaint, first pleading.

3219 What complaint to contain.

SECTION.

3220 What causes of action may be joined.

§ 3218. s 285. The first pleading on the part of the plaintiff is the complaint.

Complaint, first pleading.

§ 3219. s 286. The complaint must contain:

What complaint to contain.

1. The title of the action, the name of the court and the judicial district in which the action is brought and the names of the parties to the action.

2. A statement of the facts constituting the cause of action, in ordinary and concise language.

3. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof must be stated.

§ 3220. s 287. The plaintiff may unite several causes of action, in the same complaint, when they all arise out of:

What causes of action may be joined.

1. Contracts express or implied.

2. Claims to recover specific real property, with or without damages, for the withholding thereof, or for waste committed thereon, and the rents and profits of the same.

3. Claims to recover specific personal property, with or without damage for the withholding thereof.

4. Claims against a trustee, by virtue of a contract, or by operation of law.

5. Injuries to character.

6. Injuries to person.

7. Injuries to property.

The causes of action so united must all belong to one only of these classes, and must affect all the parties to the action, and not require different places of trial, and must be separately stated; but an action for malicious arrest and prosecution, or either of them, may be united with an action for either an injury to character or to the person.

CHAPTER III.

DEMURRER TO COMPLAINT.

SECTION.

3221 When defendant may demur.

3222 Demurrer must specify, etc.; may be taken to part; may answer and demur at same time.

SECTION.

3223 What proceedings are to be had when complaint is amended.

3224 Objection not appearing on complaint may be taken by answer.

3225 Objection, when deemed waived.

When defendant may demur.

§ 3221. s 292. The defendant may demur to the complaint within the time required in the summons to answer, when it appears upon the face thereof, either:

1. That the court has no jurisdiction of the person of the defendant, or the subject of the action; or,

2. That the plaintiff has not legal capacity to sue; or,

3. That there is another action pending between the same parties for the same cause; or,

4. That there is a defect or misjoinder of parties, plaintiff or defendant; or,

5. That several causes of action have been improperly united; or,

6. That the complaint does not state facts sufficient to constitute a cause of action; or,

7. That the complaint is ambiguous, unintelligible, or uncertain.

§ 3222. s 293. The demurrer must distinctly specify the grounds upon which any of the objections to the complaint are taken. Unless it do so, it may be disregarded. It may be taken to the whole complaint or to any of the causes of action stated therein, or the defendant may demur and answer at the same time.

Demurrer must specify, etc.
May be taken to part.
May answer and demur at same time

§ 3223. s 294. If the complaint is amended, a copy of the amendments must be filed, or the court may, in its discretion, require the complaint, as amended, to be filed, and a copy of the amendments, or amended complaint, must be served upon the defendants affected thereby, or upon his attorney if he has appeared by attorney. The defendant must answer the amendment or the complaint as amended, within ten days after service thereof, or such other time as the court may direct, and judgment by default may be entered, upon failure to answer, as in other cases.

What proceedings are to be had when complaints amended.

§ 3224. s 295. When any of the matters enumerated in section 292 do not appear upon the face of the complaint, the objection may be taken by answer.

Objection not appearing on complaint may be taken by answer.

§ 3225. s 296. If no objection be taken, either by demurrer or answer, the defendant must be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

Objection when deemed waived.

CHAPTER IV.

THE ANSWER.

SECTION.

3226 Answer, what to contain.

3227 When counter claim to be set up.

3228 When defendant omits to set up counter claim.

SECTION.

3229 Cross demands deemed compensated.

3230 Answer may contain several grounds of defense.

3231 Cross complaint.

Answer, what to contain.

§ 3226. s 300. The answer of the defendant shall contain:

1. A general or specific denial of the material allegations of the complaint controverted by the defendant.

2. A statement of any new matter constituting a defense or counter claim. If the complaint be verified, the denial of each allegation controverted must be specific, and be made positively, or according to the information and belief of the defendant. If the defendant has no information or belief sufficient to enable him to answer an allegation of the complaint, he may so state in his answer, and place his denial on that ground. If the complaint be not verified, a general denial is sufficient, but only puts in issue the material allegations of the complaint.

When counter claim is to be set up.

§ 3227. s 301. The counter claim mentioned in the last section must be one existing in favor of a defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action.

1. A cause of action arising out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action.

2. In an action arising upon contract, any other cause of action arising also upon contract, and existing at the commencement of the action.

When defendant omits to set up counter claim.

§ 3228. s 302. If the defendant omit to set up a counter claim in the cases mentioned in the first subdivision of the last section, neither he nor his assignee can afterward maintain an action against the plaintiff therefor.

§ 3229. s 303. When cross demands have existed between persons under such circumstances that if one had brought an action against the other, a counter claim could have been set up, the two demands shall be deemed compensated so far as they equal each other, and neither can be deprived of the benefit thereof by the assignment or death of the other. Cross demands deemed compensated.

§ 3230. s 304. The defendant may set forth by answer as many defenses and counter claims as he may have. They must be separately stated, and the several defenses must refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished. The defendant may also answer one or more of the several causes of action stated in the complaint and demur to the residue or may demur and answer at the same time. Answer may contain several grounds of defense.

§ 3231. s 305. Whenever the defendant seeks affirmative relief against any party relating to or depending upon the contract or transaction upon which the action is brought, or affecting the property to which the action relates, he may, in addition to his answer, file at the same time, or by permission of the court, subsequently, a cross complaint. The cross complaint must be served upon the parties affected thereby, and such parties may demur or answer thereto as to an original complaint. Cross complaint.

CHAPTER V.

DEMURRER TO ANSWER.

SECTION.

3232 Demurrer to answer.

SECTION.

3233 Grounds of demurrer.

§ 3232. s 310. The plaintiff may, within the same length of time after service of the answer as the defendant is allowed to answer after service of summons, demur to the Demurrer to answer.

answer of the defendant, or to one or more of the several defenses or counter claims set up in the answer.

Grounds of
demurrer

§ 3233. s 311. The demurrer may be taken upon one or more of the following grounds:

1. That several causes of counter claim have been improperly joined.

2. That the answer does not state facts sufficient to constitute a defense or counter claim.

3. That the answer is ambiguous, unintelligible, or uncertain.

CHAPTER VI.

VERIFICATION OF PLEADINGS.

SECTION.

3234 Verification of pleadings.

3235 Copy of written instrument contained in complaint admitted, unless answer is verified.

SECTION.

3236 Genuineness of instrument, how controverted.

3237 Exceptions to rules prescribed by two preceding sections.

Verification of
pleadings.

§ 3234. s 315. Every pleading must be subscribed by the party, or his attorney, and when the complaint is verified, or when the Territory, or any officer of the Territory in his official capacity is plaintiff, the answer must be verified, unless an admission of the truth of the complaint might subject the party to a criminal prosecution, or unless an officer of the Territory, in his official capacity, is defendant. In all cases of a verification of a pleading, the affidavit of the party must state that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true; and where a pleading is verified, it must be by the affidavit of a party, unless the parties are absent from the

county where the attorney resides, or from some cause unable to verify it, or the facts are within the knowledge of his attorney or other person verifying the same. When the pleading is verified by the attorney, or any other person except one of the parties, he must set forth in the affidavit the reasons why it is not made by one of the parties. When a corporation is a party, the verification may be made by any officer thereof.

§ 3235. s 316. When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the answer denying the same be verified. Copy of written instrument contained in complaint admitted, unless answer is verified.

§ 3236. s 317. When the defense to an action is founded upon a written instrument, and a copy thereof is contained in the answer, or is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the plaintiff file with the clerk, within ten days after receiving a copy of the answer, an affidavit denying the same, and serve a copy thereof on the defendant or his attorney. Genuineness of instrument, how controverted.

§ 3237. s 318. But the execution of the instruments mentioned in the two preceding sections is not deemed admitted by a failure to deny the same under oath, if the party desiring to controvert the same is, upon demand, refused an inspection of the original. Such demand must be in writing, served by copy, upon the adverse party or his attorney, and filed with the papers in the case. Exceptions to rules prescribed by two preceding sections.

CHAPTER VII.

GENERAL RULES OF PLEADING.

SECTION.	SECTION.
3238 Pleadings to be liberally construed.	3244 Statute of limitations, how pleaded.
3239 Sham and irrelevant answers, etc., may be stricken out.	3245 Private statutes, how pleaded.
3240 How to state an account in pleadings. Copy of to be delivered on request.	3246 Libel and slander, how stated in complaint.
3241 Description of real property in a pleading.	3247 Answer in such cases.
3242 Judgments, how pleaded.	3248 Allegations not denied, when to be deemed true; when to be deemed controverted.
3243 Conditions precedent, how to be pleaded.	3249 A material allegation defined.
	3250 Supplemental complaint and answer.
	3251 Pleadings to be filed and served.

Pleadings to be liberally construed.

§ 3238. s 322. In the construction of a pleading for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.

Sham and irrelevant answers, etc., may be stricken out.

§ 3239. s 323. Sham and irrelevant answers, and irrelevant and redundant matter inserted in a pleading, may be stricken out, upon such terms as the court may in its discretion impose.

How to state an account in pleadings.

§ 3240. s 324. It is not necessary for a party to set forth in a pleading the items of an account therein alleged, but he must deliver to the adverse party, within ten days after a demand thereof, in writing, a copy of the account, or be precluded from giving evidence thereof. The court, or a judge thereof, may order a further account when the one delivered is too general or is defective in any particular.

Copy to be delivered on request.

Description of real property in a pleading.

§ 3241. s 325. In an action for the recovery of real property, it must be described in the complaint with such certainty as to enable an officer, upon execution, to identify it.

Judgments, how pleaded.

§ 3242. s 326. In pleading a judgment or other determination of a court, or board, or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted,

the party pleading must establish, on the trial, the facts conferring jurisdiction.

§ 3243. s 327. In pleading the performance of conditions precedent in a contract, it is not necessary to state the facts showing such performance, but it may be stated generally, that the party duly performed all the conditions on his part, and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing such performance.

Conditions precedent, how to be pleaded.

§ 3244. s 328. In pleading the statute of limitations, it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred by the provisions of section (giving the number of the section and subdivision thereof, if it is so divided, relied upon) of the Code of Civil Procedure; and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing that the cause of action is so barred.

Statute of limitations, how pleaded.

§ 3245. s 329. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Private statutes, how pleaded.

§ 3246. s 330. In an action for libel or slander, it is not necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the action arose; but it is sufficient to state, generally, that the same was published, or spoken, concerning the plaintiff; and if such allegation be controverted, the plaintiff must establish, on the trial, that it was so published or spoken.

Libel and slander, how stated in complaint.

§ 3247. s 331. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages, and, whether he prove the justification or not, he may give in evidence the mitigating circumstances.

Answer in such cases.

§ 3248. s 332. Every material allegation of the complaint not controverted by the answer, must, for the purposes of the action, be taken as true; the statement of any new matter in the answer, in avoidance or constituting a defense or counter claim, must, on the trial, be deemed controverted by the opposite party.

Allegations not denied, when deemed true. When to be deemed controverted.

§ 3249. s 333. A material allegation in a pleading is one

A material allegation defined. essential to the claim, or defense, and which could not be stricken from the pleading without leaving it insufficient.

Supplemental complaint and answer. § 3250. s 334. The plaintiff and defendant, respectively, may be allowed, on motion, to make a supplemental complaint or answer, alleging facts material to the case occurring after the former complaint or answer, but the making of a supplemental complaint or answer is not a waiver of the cause of action set up in the former complaint, or of the defense set up in the former answer.

Pleadings to be filed and served. § 3251. s 335. All pleadings subsequent to the complaint must be filed with the clerk and copies thereof served upon the adverse party, or his attorney.

CHAPTER VIII.

VARIANCE, MISTAKES IN PLEADINGS, AND AMENDMENTS.

SECTION.

- 3252 Variance, when material.
 3253 Immaterial variance, how treated.
 3254 What not to be deemed a variance, but a failure of proof.
 3255 Amendments of course. Answer and demurrer may be filed at same time.

SECTION.

- 3256 Amendments on terms; discretion and power of court; affidavit may be disregarded.
 3257 Suing a party by a fictitious name
 3258 No error or defect to be regarded unless it affects substantial rights.
 3259 Time to amend or answer demurrer.

Variance, when material.

§ 3252. s 340. No variance between the allegations in a pleading and the proof is to be deemed material, unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it appears that a party has been so misled, the court may order the pleading to be amended, upon such terms as may be just.

§ 3253. s 341. Where the variance is not material as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment without costs.

Immaterial variance, how treated.

§ 3254. s 342. Where, however, the allegation of the claim or defense to which the proof is directed, is unproved, not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance within the last two sections, but a failure of proof.

What not to be deemed a variance, but a failure of proof.

§ 3255. s 343. Any pleading may be amended once by the party of course, and without costs, at any time before answer or demurrer filed, or after demurrer, and before the trial of the issue of law thereon, by filing the same as amended and serving a copy on the adverse party, who may have ten days thereafter in which to answer or demur to the amended pleading. A demurrer is not waived by filing an answer at the same time; and when the demurrer to a complaint is overruled and there is no answer filed, the court may, upon such terms as may be just, allow an answer to be filed. If a demurrer to the answer be overruled, the facts alleged in the answer must be considered as denied to the extent mentioned in section 332.

Amendments of course.

Answer and demurrer may be filed at the same time.

§ 3256. s 344. The court may, in furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made and filed after the time limited by this Code; any may, also, upon such terms as may be just relieve a party or legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertance, surprise, or excusable neglect; and when, for any reason satisfactory to the court, or the judge thereof, the party aggrieved has failed to apply for the relief sought during the term at which such judgment, order, or proceeding complained of was taken, the court, or the judge thereof

Amendments on terms.

Discretion and power of court

in vacation, may grant the relief upon the application made within a reasonable time, not exceeding six months after the adjournment of the term. When, from any cause, the summons in an action has not been personally served on the defendant, the court may allow on such terms as may be just, such defendant or his legal representative, at any time within one year after the rendition of any judgment in such action, to answer to the merits of the original action. When in an action to recover the possession of personal property, the person making any affidavit did not truly state the value of the property, and the officer taking the property, or the sureties on any bond or undertaking, is sued for taking the same, the officer or sureties may in their answers set up the true value of the property, and that the person in whose behalf said affidavit was made was entitled to the possession of the same when said affidavit was made, or that the value in the affidavit stated was inserted by mistake, the court shall disregard the value as stated in the affidavit, and give judgment according to the right of possession of said property at the time the affidavit was made.

Affidavit may be disregarded.

§ 3257, s 343. When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint, and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly.

No error or defect to be regarded unless it affects substantial rights.

§ 3258, s 346. The court must in every stage of an action disregard any error or defect in the pleadings or proceedings, which does not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect.

Time to amend or answer demurrer.

§ 3259, s 347. When a demurrer to any pleading is sustained or overruled, and time to amend or answer is given, the time so given runs from the service of notice of the decision or order.

TITLE VII.

OF THE PROVISIONAL REMEDIES IN CIVIL ACTION.

SECTION.	SECTION.
3260 No person to be arrested except as prescribed in this Code.	3274 Delivery of undertaking to plaintiff and its acceptance or rejection by him.
3261 Defendant, when subject to arrest.	3275 Notice of justification; new undertaking if other fail.
3262 Order for arrest, by whom made.	3276 Qualifications of bail.
3263 Affidavit for order of arrest requisite.	3277 Justification of bail.
3264 Undertaking required of plaintiff.	3278 Allowance of bail.
3265 Order, when made and its form.	3279 Deposit of money with officer.
3266 Affidavit and order to be delivered to the sheriff and copy to defendant.	3280 Payment of money into court by officer.
3267 Arrest, how made.	3281 Substituting bail for deposit.
3268 Defendant to be discharged on bail or deposit.	3282 Money deposited, how applied or disposed of.
3269 Bail, how given.	3283 Officer, when liable as bail, and his discharge from liability.
3270 Surrender of defendant.	3284 Proceedings on judgment against officer.
3271 Same.	3285 Motion to vacate order of arrest or reduce bail.
3272 Bail, how proceeded against.	3286 When the order vacated or bail reduced.
3273 Bail, how exonerated.	

§ 3260. s 351. No person shall be arrested in a civil action except as prescribed in this Code.

§ 3261. s 352. The defendant may be arrested, as hereinafter prescribed, in the following cases:

1. In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, where the defendant is about to depart from the Territory with intent to defraud his creditors, or when the action is for wilful injury to person, to character, or to property, knowing the property to belong to another.

2. In an action for a fine or penalty or for a breach of promise to marry, or for money or property embezzled, or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in fiduciary capacity; or for misconduct or neglect in office, or in a professional employment, or for a wilful violation of duty.

No person to be arrested except as prescribed in this Code.

Defendant when subject to arrest.

3. In an action to recover the possession of personal property unjustly detained, when the property or any part thereof has been concealed, removed or disposed of, so that it cannot be found or taken by the marshal, sheriff, or other executive officer of the court.

4. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or in concealing or disposing of the property, for the taking, detention, or conversion of which the action is brought.

5. When the defendant has removed or disposed of his property, or is about to do so, with the intent to defraud his creditors.

Order for
arrest by
whom made.

§ 3262. s 353. An order for the arrest of the defendant must be obtained from a judge of the court in which the action is brought.

Affidavit for
order of arrest
requisite.

§ 3263. s 354. The order may be made whenever it appears to the judge by the affidavit of the plaintiff or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section 352. The affidavit must be either positive or upon information and belief; and when upon information and belief, it must state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit must be filed with the clerk of the court.

Undertaking
required of
plaintiff.

§ 3264. s 355. Before making the order, the judge must require a written undertaking on the part of the plaintiff, with sureties in an amount to be fixed by the judge, which must be at least five hundred dollars, to the effect that the plaintiff will pay all costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the undertaking. The undertaking must be filed with the clerk of the court.

Order when
made and its
form.

§ 3265. s 356. The order may be made at the time of the issuing of the summons, or any time afterwards, before judgment. It must require the officer to whom it is directed, forthwith to arrest the defendant and hold him to bail in a specified sum, and to return the order at a time therein mentioned to the clerk of the court in which the action is pending.

§ 3266. s 357. The order of arrest, with a copy of the

affidavit upon which it is made, must be delivered to the officer, who, upon arresting the defendant, must deliver to him a copy of the affidavit, and also, if desired, a copy of the order of arrest.

Affidavit and order to be presented to the sheriff and copy to defendant.

§ 3267. s 358. The officer must execute the order by arresting the defendant and keeping him in custody until discharged by law.

Arrest, how made.

§ 3268. s 359. The defendant, at any time before execution, must be discharged from the arrest either upon giving bail, or upon depositing the amount mentioned in the order of arrest.

Defendant to be discharged on bail or the deposit.

§ 3269. s 360. The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, to the effect that they are bound in the amount mentioned in the order of arrest: that the defendant will at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein, or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

Bail, how given.

§ 3270. s 361. At any time before judgment or within ten days thereafter, the bail may surrender the defendant in their exoneration: or he may surrender himself to the officer of the court, where he was arrested.

Surrender of defendant.

§ 3271. s 362. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest him; or by written authority, endorsed on a certified copy of the undertaking, may empower an officer to do so. Upon the arrest of the defendant by said officer, or upon his delivery to him by the bail, or upon his own surrender, the bail are exonerated, if such arrest, delivery, or surrender take place before the expiration of ten days after judgment; but if such arrest, delivery, or surrender be not made within ten days after judgment, the bail are finally charged on their undertaking, and bound to pay the amount of the judgment within ten days thereafter.

Same.

§ 3272. s 363. If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of the original judgment.

Bail, how proceeded against.

Bail, how
exonerated.

§ 3273. s 364. The bail are exonerated by the death of the defendant, or his imprisonment in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process.

Delivery of
undertaking
to plaintiff,
and its
acceptance or
rejection by
him.

§ 3274. s 365. Within the time limited for that purpose, the officer making the arrest must file the order of arrest in office of the clerk of the court in which the action is pending with his return endorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he must retain in his possession until filed, as herein provided. The plaintiff, within ten days thereafter, may serve upon the officer a notice that he does not accept the bail, or he is deemed to have accepted them, and the officer is exonerated from liability. If no notice be served within ten days, the original undertaking must be filed with the clerk of the court.

Notice of
justification.

§ 3275. s 366. Within five days after the receipt of notice, the officer or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail (specifying the places of residence and occupations of the latter) before the judge of the court, or clerk, at a specified time and place: the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there must be a new undertaking.

New
undertaking,
if other bail.

Qualifications
of bail.

§ 3276. s 367. The qualifications of bail are as follows:

1. Each of them shall be a resident, and householder, or freeholder, within the Territory.

2. Each must be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this Chapter, over and above all his debts and liabilities, exclusive of property, exempt from execution; but the judge or clerk, on justification, may allow more than two sureties to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Justification
of bail.

§ 3277. s 368. For the purpose of justification, each of the bail must attend before the judge or clerk, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the judge or clerk in his discretion may think proper. The examination must be reduced to writing, and subscribed by the bail, if required by the plaintiff.

§ 3278. s 369. If the judge, or clerk, find the bail sufficient, he must annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the officer is thereupon exonerated from liability. Allowance of bail

§ 3279. s 370. The defendant may, at the time of his arrest, instead of giving bail, deposit with the officer the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this Chapter, the defendant may deposit such amount instead of giving bail. In either case, the officer must give the defendant a certificate of the deposit made, and the defendant must be discharged from custody. Deposit of money with officer.

§ 3280. s 371. The officer making the arrest, must, immediately after the deposit, pay the same into court, and take from the clerk receiving the same, two certificates of such payment, the one of which he must deliver or transmit to the plaintiff, or his attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the officer to collect the sum deposited as in other cases of delinquency. Payment of money into court by officer.

§ 3281. s 372. If money be deposited, as provided in the last two sections, bail may be given, and may justify upon notice at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited must be refunded to the defendant. Substituting bail for deposit.

§ 3282. s 373. Where money has been deposited, if it remain on deposit at the time of the recovery of a judgment in favor of the plaintiff, the clerk must, under the direction of the court, apply the same in satisfaction thereof, and after satisfying the judgment must refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk must, under the direction of the court, refund to him the whole sum deposited and remaining unapplied. Money deposited, how applied or disposed of.

§ 3283. s 374. If after being arrested, the defendant escape, or is rescued, the officer is liable as bail; but he may discharge himself from such liability by giving bail at any time before judgment. Officer, when liable as bail, and his discharge from liability.

§ 3284. s 375. If a judgment be recovered against the officer, upon his liability as bail, and an execution thereon is returned unsatisfied, in whole or in part, the same proceedings may be had on his official bond for the recovery of the whole or any deficiency, as in other cases of delinquency. Proceedings on judgment against officer.

Motion to
vacate order
of arrest or
reduce bail.

§ 3285. s 376. A defendant arrested, may, at any time before the trial of the action, or, if there be no trial, before the entry of judgment, apply to the judge who made the order, or the court in which the action is pending, upon reasonable notice, to vacate the order of arrest, or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs in addition to those on which the order of arrest was made.

Contest of
motion.

When the
order vacated
or bail
reduced.

§ 3286. s 377. If upon application it appears that there was not sufficient cause for the arrest, the order must be vacated; or if it appears that the bail was fixed too high, the amount must be reduced.

CHAPTER II.

CLAIM AND DELIVERY OF PERSONAL PROPERTY.

SECTION.

- 3287 Delivery of personal property; when it may be claimed.
- 3288 Affidavit and its requisites.
- 3289 Requisition to United States marshal to take and deliver the property.
- 3290 Security on the part of the plaintiff and proceedings in serving the order.
- 3291 Exceptions to sureties and proceedings thereon, or on failure to except.

SECTION.

- 3292 Defendant, when entitled to re-delivery.
- 3293 Justification of defendant's sureties.
- 3294 Qualification of sureties.
- 3295 Property, how taken when concealed in building or enclosure.
- 3296 Property, how kept.
- 3297 Claim of property by third person.
- 3298 Notice and affidavit, and where to be filed.

Delivery of
personal
property,
when it may
be claimed.

§ 3287. s 382. The plaintiff in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him as provided in this Chapter.

Affidavits and
its requisites.

§ 3288. s 383. Where a delivery is claimed, an affidavit must be made by the plaintiff, or by some one on his behalf, showing:

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is entitled to the possession thereof.

2. That the property is wrongfully detained by the defendant.

3. The alleged cause of the detention thereof according to his best knowledge, information and belief.

4. That it has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution or an attachment against the property of the plaintiff; or if so seized, that it is by statute exempt from such seizure; and,

5. The actual value of the property.

§ 3289. s 384. The plaintiff, or his attorney may, thereupon, by an indorsement in writing upon the affidavit, require the United States marshal, or the sheriff of the county, where the property claimed may be, to take the same from the defendant.

Requisition to U. S. marshal to take and deliver the property.

§ 3290. s 385. Upon the receipt of the affidavit and notice with a written undertaking, executed by two or more sufficient sureties, approved by the United States marshal, or sheriff, to the effect that they are bound to the defendant in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the officer must forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He must without delay, serve on the defendant a copy of the affidavit, notice and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or if neither can be found, by leaving them at the usual place of abode of either, with some persons of suitable age and discretion, or if neither have any known place of abode, by putting them in the nearest post office (post paid), directed to the defendant.

Security on the part of the plaintiff and proceedings in serving the order.

§ 3291. s 386. The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the officer that he excepts to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When the defendant excepts,

Exceptions to sureties and proceedings thereon or on failure to except.

the sureties must justify on notice in like manner as upon bail on arrest: and the officer is responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

Defendant
when entitled
to re-delivery.

§ 3292. s 387. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the officer a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within five days after the taking and service of notice to the defendant, it must be delivered to the plaintiff, except as provided in section 392.

Justification
of defendant's
sureties.

§ 3293. s 388. The defendant's sureties, upon notice to the plaintiff of not less than two, or more than five days, must justify before the judge, or the clerk, in the same manner as upon bail or arrest: and upon such justification, the officer must deliver the property to the defendant. The officer is responsible for defendant's sureties until they justify, or until the justification is completed or waived, and may retain the property until that time. If they, or others in their place, fail to justify at the time and place appointed, he must deliver the property to the plaintiff.

Qualification
of sureties.

§ 3294. s 389. The qualification of sureties, and their justification must be such as are prescribed by this Code, in respect to bail upon an order of arrest.

Property, how
taken when
concealed in
building or
enclosure.

§ 3295. s 390. If the property, or any part thereof, be concealed in a building or enclosure, the officer must publicly demand its delivery. If it be not delivered, he must cause the building or enclosure to be broken open, and take the property into his possession, and if necessary, he may call to his aid the power of the county.

Property, how
kept.

§ 3296. s 391. When the officer has taken the property as in this Chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving

his fees for taking, and necessary expenses for keeping the same.

§ 3297. s 392. If the property taken be claimed by another person than the defendant, or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the officer, the officer is not bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim by an undertaking, by two sufficient sureties.

Claim of property by third person.

§ 3298. s 393. The officer must file the notice, undertaking, and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein.

Notice and affidavit, and where to be filed

CHAPTER III.

INJUNCTION.

SECTION.	SECTION.
3299 Injunction, what it is and who may grant it.	3304 Order to show cause why injunction should not be granted.
3300 When it may be granted.	3305 Injunction to suspend business of a corporation, how and by whom granted.
3301 At what time it may be granted and what is required to obtain it.	3306 Motion to vacate or modify injunction.
3302 Injunction after answer.	3307 When to be vacated or modified.
3303 Undertaking on injunction.	

§ 3299. s 397. An injunction is a writ or order, requiring a person to refrain from a particular act. The order or writ may be granted by the court in which the action is brought, or by a judge thereof, and when made by a judge, may be enforced as the order of the court

Injunction, what is, and who may grant it.

When it may
be granted

§ 3300. s 398. An injunction may be granted in the following cases:

1. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

2. When it appears by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce waste, great or irreparable injury to the plaintiff.

3. When it appears during the litigation, that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

4. An injunction may also be granted on the motion of the defendant, upon filing an answer in the nature of a cross bill, praying for affirmative relief upon any of the grounds mentioned above in this section, subject to the same rules and provisions provided for the issuance of injunctions on behalf of the plaintiff.

At what time
it may be
granted, and
what is re-
quired to ob-
tain it.

§ 3301. s 399. The injunction may be granted at the time of issuing the summons upon the complaint, and at any time afterwards, before judgment, upon affidavits or other evidence. The complaint in the one case, and the affidavits or other evidence in the other, must show satisfactorily that sufficient grounds exist therefor. No injunction can be granted on the complaint, unless it is verified. When granted on the complaint, a copy of the complaint and verification attached must be served with the injunction; when granted upon affidavit, without notice, a copy of the affidavit must be served with the injunction.

Injunction
after answer.

§ 3302. s 400. An injunction shall not be allowed after the defendant has answered, unless upon notice, or upon an order to show cause, but in such case the defendant may be restrained until the decision of the court or judge granting or refusing the injunction.

Undertaking
on injunction.

§ 3303. s 401. On granting an injunction, the court or judge must require, except when the Territory, a county, or municipal corporation, or a married woman in a suit against her husband, is a party plaintiff, a written undertaking on the

part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined, such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto. Within five days after the service of the injunction, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties upon notice to the defendant of not less than two nor more than five days, must justify before a judge or clerk of the court in the same manner as upon bail on arrest, and upon failure to justify, or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved.

Justification
on sureties.

§ 3304. s 402. If the court or judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may in the meantime be restrained.

Order to show
cause why in-
junction
should not be
granted.

§ 3305. s 403. An injunction to suspend the general and ordinary business of a corporation cannot be granted without due notice of the application therefor to the proper officers or agent of the corporation, except when the people of this Territory are a party to the proceedings.

Injunction to
suspend busi-
ness of corpo-
ration, how
and by whom
granted.

§ 3306. s 404. If an injunction be granted without notice, the defendant, at any time before the trial, may apply, upon reasonable notice, to the judge who granted the injunction, or to the court in which the action is pending, or a judge thereof, to dissolve or modify the same. The application may be made upon the complaint and the affidavit or affidavits on which the injunction was granted, if any were used, or upon affidavits or other testimony on the part of the defendant, with or without the answer. If the application be made upon affidavits, or other evidence on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence in addition to those on which the injunction was granted, and the defendant may then, in proper cases, introduce rebutting affidavits or other evidence; *Provided*, That for the purpose of allowing the plaintiff to introduce further evidence, the answer or verification thereto attached shall be deemed an affidavit.

Motion to va-
cate or mod-
ify injunction.

When to be
created
or modified.

§ 3307. s 405. If upon such application it satisfactorily appear that there is not sufficient ground for the injunction, it may be dissolved; or if it satisfactorily appear that the extent of the injunction is too great, it must be modified.

CHAPTER IV.

ATTACHMENT.

SECTION.	SECTION.
3308 Attachment, when may issue and in what cases.	3318 Perishable property, how sold.
3309 Affidavit for attachment, what to contain.	3319 Property attached may be sold under execution if the interests of the party require.
3310 Undertaking on attachment.	3320 If plaintiff obtains judgment, how satisfied.
3311 Writ to whom directed and what to state.	3321 Where there remains a balance due, how collected.
3312 Shares of stock and debts due defendant how attached and disposed of.	3322 When suits may be commenced on the undertaking.
3313 How real and personal property shall be attached.	3323 If defendant recover judgment, what the officer is to deliver.
3314 Attorney to give written instructions to officer what to attach; copy of writ to be served upon each person.	3324 Proceedings to release attachment, before whom taken.
3315 Garnishment; when garnishee liable to plaintiff.	3325 Release from attachment, on what terms.
3316 Citation to garnishee to appear before a court or judge.	3326 Motions for discharge of writ, when and before whom made.
3317 Inventory, how made; party refusing to give memorandum may be compelled to pay costs.	3327 When motion made on affidavit, it may be opposed by affidavit.
	3328 When writ must be discharged.
	3329 When writ to be returned.

Attachment,
when may
issue and in
what cases.

§ 3308. s 410. The plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as in this Chapter provided, in the following cases: In an action upon a judgment or upon a contract express or implied, which is not secured by any mortgage or lien upon real or personal property situate or being in this Territory, or if originally so secured when

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Causes for
which attach-
ment may be
issued.

such security has, without any act of the plaintiff or of the person to whom the security was given become valueless; against a defendant who,

1. Is not residing in this Territory; or,
2. Stands in defiance of an officer, or conceals himself so that process cannot be served upon him; or,
3. Has assigned, disposed of, or concealed, or is about to assign, dispose of, or conceal, any of his property with intent to defraud his creditors; or,
4. Has departed, or is about to depart from the Territory to the injury of his creditors; or,

5. Fraudulently contracted the debt, or incurred the obligation respecting which the action is brought: *Provided*, That hereafter in the cases mentioned in subdivisions 3, 4, and 5, of this section the cause of action shall, for the purpose of securing the obligation, be deemed to have accrued, and the property attached, or its proceeds after disposition as provided in sections 420 and 421, of the act of which this is amendatory, may be held subject to the judgment thereafter to be rendered, but no judgment shall be rendered thereon until such obligation shall by its terms become due. (1)

Cases in which an attachment may be issued for debts not due.

§ 3309. s 411. The clerk of the court shall issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, which shall be filed, setting forth:

1. That the defendant is indebted to the plaintiff specifying the amount of such indebtedness as near as may be over and above all legal set offs or counter claims, and whether upon a judgment or an express or implied contract, and that the payment of the same has not been secured by any mortgage or lien upon real or personal property, or any pledge of personal property, situate or being in this Territory; or, if originally so secured, that such security has, without any act of the plaintiff, or the person to whom the security was given, becomes valueless; and that the same is an actual bona fide existing demand due and owing from the defendant to the plaintiff.

Affidavit for attachment, what to contain.

2. And in all cases that the attachment is not sought and the action is not prosecuted to hinder, delay or defraud any creditor of the defendant, and also specifying one or more of the causes set forth in the preceding section.

(1) The amendment took effect June 1, 1898.

Undertaking
on attach-
ment

§ 3310. s 412. Before issuing the writ the clerk must require a written undertaking on the part of the plaintiff, in a sum not less than two hundred dollars, and not exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect that if the defendant recover judgment, or if the attachment be wrongfully issued, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Writ, to whom
directed and
what to state.

§ 3311. s 413. The writ must be directed to the United States marshal, or to the sheriff of any county in which property of such defendant may be, and must require him to attach and safely keep all the property of such defendant within his jurisdiction not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, and the amount of which must be stated in conformity with the complaint, unless the defendant give him security by the undertaking, of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached, in which case to take such undertaking. Several writs may be issued at the same time to the marshal, or the sheriffs of different counties; and the plaintiff may have other writs of attachment as often as he may require at any time before judgment.

Shares of
stock and
debts due de-
fendant, how
attached and
disposed of.

§ 3312. s 414. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profit thereon, and all debts due such defendant, and all other property in this Territory of such defendant not exempt from execution, may be attached and, if judgment be recovered, be sold to satisfy the judgment and execution.

How real and
personal prop-
erty shall be
attached.

§ 3313. s 415. The officer to whom the writ is directed and delivered, must execute the same without delay, and if the undertaking mentioned in section 413 be not given as follows:

1. Real property, standing upon the records of the county in the name of the defendant, must be attached by filing with the recorder of the county a copy of the writ, together with a description of the property attached and a notice that it is attached, and by leaving a similar copy of the writ, description and notice with an occupant of the property,

if there is one, if not then by posting the same in a conspicuous place on the property attached.

2. Real property or an interest therein, belonging to the defendant, and held by any other person, or standing on the records of the county in the name of any other person, must be attached by filing with the recorder of the county a copy of the writ, together with a description of the property and a notice that such real property and any interest of the defendant therein, held by or standing in the name of such other person (naming him) are attached; and by leaving with the occupant, if any, and with such other person or his agent if known and within the county, or at the residence of either, if within the county, a copy of the writ, with a similar description and notice. If there is no occupant of the property, a copy of the writ, together with such description and notice, must be posted in a conspicuous place upon the property. The recorder must index such attachment when filed in the names of both of the defendant and of the person by whom the property is held, or in whose name it stands on the records:

3. Personal property capable of manual delivery must be attached by taking it into custody.

4. Stocks or shares, or interest in stocks or shares, of any corporation or company, must be attached by leaving with the president, or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating the stock or interest of the defendant is attached in pursuance of such writ.

5. Debts and credits, and other personal property, not capable of manual delivery, must be attached by leaving with the person owing such debts, or having in his possession, or under his control, such credits or other personal property, or with his agent, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits or other personal property in his possession or under his control belonging to defendant, are attached in pursuance of said writ.

§ 3314, s 416. Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the officer making the service must serve upon such person a copy of the writ, and a notice that such credits

Attorney to
give written
instructions
to officer what
to attach.

Copy of writ
to be served
upon such
person.

or other property or debts, as the case may be, are attached in pursuance of such writ.

Garnishment;
when garnish-
ee liable to
plaintiff

§ 3315. s 417. All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice as provided in the two last sections, shall be, unless such property be delivered up or transferred, or such debts be paid to the officer, liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

Citation to
garnishee to
appear before
a court or
judge.

§ 3316. s 418. Any person owing debts to the defendant, or having in his possession or under his control any credits or other personal property belonging to the defendant, may be required to attend before the court, or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court or judge, may, after such examination, order personal property, capable of manual delivery, to be delivered to the officer, on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

Inventory
how made.

§ 3317. s 419. The officer making the service must make a full inventory of the property attached and return the same with the writ. To enable him to make such returns as to the debts and credits attached, he must request, at the time of service, the party owing the debt, or having the credit, to give him a memorandum stating the amount and description of each; and if such memorandum be refused, he must return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceeding taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

Party refus-
ing to give
memorandum
may be com-
pelled to pay
costs.

Perishable
property, how
sold.

§ 3318. s 420. If any of the property attached be perishable, the officer must sell the same in the manner in which such property is sold on execution. The proceeds and

other property attached by him must be retained by him, to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to issuing the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The receipt of the officer is a sufficient discharge for the amount paid.

§ 3319. s 421. Whenever property has been taken by an officer under a writ of attachment, and it is made to appear satisfactorily to the court, or a judge thereof, that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold in the same manner as property is sold under an execution, and the proceeds to be deposited in the court, to abide the judgment in the action. Such order can be made only upon notice to the adverse party or his attorney, in case such party has been personally served with a summons in the action.

Property attached may be sold and under execution, if the interests of the parties require.

§ 3320. s 423. If judgment be recovered by the plaintiff, the officer must satisfy the same out of the property attached by him which has not been delivered to the defendant, or a claimant, as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

If plaintiff obtains judgment, how satisfied.

1. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment.

2. If any balance remain due, and an execution shall have been issued on the judgment, he must sell under the execution, so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notice of the sales must be given, and the sales conducted as in other cases of sales on execution.

§ 3321. s 424. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the officer must proceed to collect such balance, as upon an execution in other

When there remains a balance due, how collected.

cases. Whenever the judgment shall have been paid, the officer, upon reasonable demand, must deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached, unapplied on the judgment.

When suits may be commenced on the undertaking.

§ 3322. s 425. If the execution be returned unsatisfied, in whole, or in part, the plaintiff may prosecute any undertaking given pursuant to section four hundred and thirteen (413), or section four hundred and twenty-eight (428), or he may proceed as in other cases upon the return of an execution.

If defendant recover judgment, what the officer is to deliver.

§ 3323. s 426. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the officer, and all the property attached remaining in his hands, must be delivered to the defendant, or his agent; the order of attachment shall be discharged, and the property released therefrom.

Proceedings to release attachment, before whom taken.

§ 3324. s 427. Whenever the defendant has appeared in the action, he may, upon reasonable notice to the plaintiff, apply to the court in which the action is pending, or to the judge thereof, for an order to discharge the attachment, wholly or in part; and upon the execution of the undertaking mentioned in the next section, an order may be made, releasing from the operation of the attachment, any or all of the property attached and all of the property so released, and all of the proceeds of the sales thereof must be delivered to the defendant upon the justification of the sureties on the undertaking, if required by the plaintiff.

Release from attachment, on what terms.

§ 3325. s 428. Before making such order, the court or judge must require an undertaking on behalf of the defendant, by at least two sureties, residents and freeholders, or householders in the Territory, to the effect that in case the plaintiff recover judgment in the action, defendant will, on demand, deliver the attached property so released, to the proper officer, to be applied to the payment of the judgment, or in default thereof, that the defendant and sureties will, on demand, pay to the plaintiff the full value of the property released. The court or judge making such order, may fix the sum for which the undertaking must be executed, and if necessary, in fixing such sum, to know the value of the prop-

erty released, the same may be appraised by one or more disinterested persons, to be appointed for that purpose. The sureties may be required to justify before the court or judge, and the property attached cannot be released from the attachment without their justification, if the same be required.

§ 3326. s 429. The defendant may also, at any time, either before or after the release of the attached property, or before any attachment shall have been actually levied, upon reasonable notice to the plaintiff, apply on motion to the court in which the action is brought, or to the judge thereof, for the discharge of the writ of attachment, on the ground that the same was improperly or irregularly issued.

Motions for discharge of writ, when and before whom made.

§ 3327. s 430. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other evidence, in addition to those on which the attachment was made.

When motion made on affidavit, it may be opposed by affidavit.

§ 3328. s 431. If upon such application it satisfactorily appears that the writ of attachment was improperly or irregularly issued it must be discharged.

When writ must be discharged.

§ 3329. s 432. The officer making the service must return the writ of attachment with the summons, if issued at the same time; otherwise within twenty days after its receipt, with a certificate of his proceedings indorsed thereon or attached thereto; and whenever an order has been made, discharging or releasing an attachment upon real property, a certified copy of such order may be filed in the office of the county recorder in which the notice of attachment has been filed, and be indexed in like manner.

When writ to be returned.

CHAPTER V.

RECEIVERS.

SECTION.

- 3330 Appointment of receiver.
 3331 Appointment of receivers upon
 dissolution of corporations.
 3332 Receiver, appointment; under-
 taking on *ex parte* application.

SECTION.

- 3333 Oath and undertaking.
 3334 Powers of receivers.
 3335 Investment of funds.

Appointment
 of receiver.

§ 3330. s 436. A receiver may be appointed by the court in which an action is pending, or has passed to judgment, or by the judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.

2. In an action by a mortgagee for the foreclosure of his mortgage, and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt.

3. After judgment, to carry the judgment into effect.

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

5. In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

§ 3331. s 437. Upon the dissolution of any corporation

the district court of the district embracing the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over, among the stockholders or members.

Appointment
of receivers
upon dissolution
of corporations.

§ 3332. s 438. No party or attorney, or person interested in the action, can be appointed receiver therein, without the written consent of the parties, filed with the clerk. If a receiver be appointed upon an *ex parte* application, the court, before making the order, may require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver, and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause; and the court may, in its discretion, at any time after said appointment, require an additional undertaking.

Receiver,
appointment;
undertaking
on *ex parte*
application.

§ 3333. s 439. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the court or judge, execute an undertaking to such person, and in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

Oath and
undertaking.

§ 3334. s 440. The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.

Powers of
receiver.

§ 3335. s 441. Funds in the hands of a receiver may be invested upon interest, by order of the court; but no such order can be made, except upon the consent of all the parties to the action.

Investment of
funds.

CHAPTER VI.

DEPOSIT IN COURT.

SECTION.

3336 Deposit in court.

3337 Money paid to clerk must be deposited under direction of judge

SECTION.

3338 Manner of enforcing the order.

Deposit in court.

§ 3336. s 445. When it is admitted by the pleading, or shown upon the examination of a party, that he has in his possession or under his control, any money or other thing capable of delivery, which being the subject of litigation is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court, or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

Money paid to clerk must be deposited under direction of judge.

§ 3337. s 446. If the money is deposited in court, it must be paid to the clerk, who must deposit it, under the direction of the court or judge.

Manner of enforcing the order.

§ 3338. s 447. Whenever in the exercise of its authority, a court has ordered the deposit or delivery of money, or other thing, and the order is disobeyed, the court, beside punishing the disobedience, may make an order requiring the United States marshal or sheriff to take the money, or thing, and deposit or deliver it in conformity with the direction of the court.

TITLE VIII.

OF THE TRIAL AND JUDGMENT IN CIVIL ACTIONS.

CHAPTER I.

JUDGMENT IN GENERAL.

SECTION.

3339 Judgment defined.

3340 Judgment may be for or against one of the parties.

3341 Judgment may be against one party and proceed as to others.

SECTION.

3342 Relief granted to plaintiff.

3343 Action may be dismissed or nonsuit entered.

3344 All other judgments are on the merits.

§ 3339. s 451. A judgment is the final determination of the rights of parties in an action or proceeding. Judgment defined.

§ 3340. s 452. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves. Judgment may be for or against one of the parties.

§ 3341. s 453. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment is proper. Judgment may be against one party and proceed as to others.

§ 3342. s 454. The relief granted to the plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his complaint; but in any other case the court may grant him any relief consistent with the case made by the complaint and embraced within the issue. Relief which may be granted to plaintiff.

§ 3343. s 455. An action may be dismissed, or a judgment of nonsuit entered in the following cases: Action may be dismissed or nonsuit entered.

1. By the plaintiff himself at any time before trial, upon the payment of costs, if a counter claim has not been made, or affirmative relief sought by the cross complaint or answer of the defendant. If a provisional remedy has been allowed

the undertaking must thereupon be delivered by the clerk to the defendant, who may have his action thereon.

2. By either party upon the written consent of the other.

3. By the court when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal.

4. By the court, when upon the trial and before the final submission of the case the plaintiff abandons it.

5. By the court upon motion of the defendant, when upon the trial the plaintiff fails to prove a sufficient case for the jury. The dismissal mentioned in the first two subdivisions is made by an entry in the clerk's register. Judgment may thereupon be entered accordingly.

All other judgments are on the merits.

§ 3344. s 456. In every case, other than those mentioned in the last section, judgment must be rendered on the merits.

CHAPTER II.

JUDGMENT UPON FAILURE TO ANSWER.

SECTION.

3345 In what cases judgment may be had upon the failure of the

SECTION.

3345 Continued. defendant to answer.

In what cases judgment may be had upon the failure of the defendant to answer.

§ 3345. s 460. Judgment may be had, if the defendant fail to answer the complaint, as follows:

1. In an action arising upon contract for the recovery of money or damages only, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk, upon application of the plaintiff, must enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs

against the defendant, or against one or more of several defendants, in the cases provided for in section two hundred and seventy one (271.)

2. In other actions, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk must enter the default of the defendant; and thereafter the plaintiff may apply, at the first, or any subsequent term of the court, for the relief demanded in the complaint. If the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account, or hear the proof, or may, in its discretion, order a reference for that purpose. And where the action is for the recovery of damages, in whole or part, the court may order the damages to be assessed by a jury; or, if to determine the amount of damages, the examination of a long account be involved, by reference, as above provided.

3. In actions where the service of the summons was by publication, the plaintiff, upon the expiration of the time for answering, may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the court must thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the Territory, must require the plaintiff, or his agent, to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover.

CHAPTER III.

ISSUES—THE MODE OF TRIAL AND POSTPONEMENT.

SECTION.	SECTION.
3346 Issues defined and the different kinds.	3352 Parties may bring issue to trial.
3347 Issue of law raised.	3353 Motion to postpone a trial for absence of testimony, requisites of.
3348 Issue of fact raised.	3354 In cases of adjournment, a party may have the testimony of any witness taken; court shall grant postponement in actions involving title to mining claims, when.
3349 Issue of law, how tried.	
3350 Issues of fact, by whom tried and order of trial.	
3351 Clerk must enter causes on the calendar to remain till disposed of.	

Issues defined and the different kinds.

§ 3346. s 465. Issues arise upon the pleadings, when a fact or a conclusion of law is maintained by the one party, and is controverted by the other. They are of two kinds:

1. Of law; and,
2. Of fact.

Issue of law how raised.

§ 3347. s 466. An issue of law arises upon a demurrer to the complaint, or answer, or to some part thereof.

Issue of fact how raised.

§ 3348. s 467. An issue of fact arises:

1. Upon a material allegation in the complaint, controverted by the answer; and,
2. Upon new matters in the answer, except an issue of law is joined thereon.

Issue of law how tried.

§ 3349. s 468. An issue of law must be tried by the court, unless it is referred upon consent.

Issues of fact, by whom tried and order of trial.

§ 3350. s 469. In actions for the recovery of specific real or personal property, with or without damages, or for money claimed as due upon contract, or as damages for breach of contract, or for injuries, an issue of fact must be tried by a jury, unless a jury trial is waived, or a reference is ordered, as provided in this Code. Where in these cases there are issues both of law and fact, the issue of law must be first disposed of. In other cases, issues of fact must be tried by the court subject to its power to order any such issue to be tried by a jury or to be referred to a referee, as provided in this Code.

§ 3351. s 470. The clerk must enter causes upon the calendar of the court according to the date of issue. Causes once placed on the calendar must remain upon the calendar from court to court, until finally disposed of; *Provided*, That causes may be dropped from the calendar by consent of parties, or by order of the court or judge, and may be again restored upon notice.

Clerk must enter causes on the calendar to remain until disposed of.

§ 3352. s 471. Either party may bring an issue to trial, or to a hearing, and in the absence of the adverse party, unless the court for good cause otherwise direct, may proceed with his case and take a dismissal of the action, or a verdict or judgment, as the case may require.

Parties may bring issue to trial.

§ 3353. s 472. A motion to postpone a trial, on the ground of the absence of evidence, can only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial must not be postponed.

Motion to postpone a trial for absence of testimony, requires of.

§ 3354. s 473. The party obtaining a postponement of a trial must, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken by deposition before a judge or clerk of the court in which the case is pending, or before such other officer as the court may indicate, which must accordingly be done, and the testimony so taken may be read on the trial with the same effect, and subject to the same objections, as if the witnesses were produced. In actions involving the title to mining claims and quartz ledges, if it be made to appear to the satisfaction of the court that in order that justice may be done, and the action fairly tried on its real merits, it is necessary that further developments should be made, and that the party applying has been guilty of no laches and is acting in good faith, the court shall grant the postponement of the trial of the action, giving the party a reasonable time in which to prepare for trial. And in granting such postponement, the court may, in its discretion, annex as a condition thereto, an order that the party obtaining such postponement shall not, pending the trial of the action,

In cases of adjournment a party may have the testimony of any witness taken.

Court shall grant postponement in actions involving title to mining claims, when.

remove from the premises in controversy any valuable quartz rock, earth or ores, and for any violation of an order so made, the court, or judge thereof, may punish for contempt, as in the cases of violation of an order of injunction, and may also vacate the order of postponement.

CHAPTER IV.

TRIAL BY THE JURY.

SECTION.	SECTION.
3355 Jury, how drawn.	3369 When prevented from giving a verdict, the cause may be tried again.
3356 Challenges, peremptory, how taken.	3370 While jury are absent, court may adjourn from time to time; sealed verdict; final adjournment discharges jury.
3357 Grounds of challenge.	3371 Verdict, how declared; form of; polling the jury.
3358 Challenges, how tried.	3372 Proceeding when verdict is informal.
3359 Jury to be sworn.	3373 General and special verdicts defined.
3360 Order of proceeding on trial.	3374 When a general or special verdict may be rendered.
3361 Charge to the jury; court must furnish in writing upon request the points of law contained therein.	3375 Verdict in actions for the recovery of money or on establishing a counter claim.
3362 Special instructions.	3376 Verdict in actions for specific personal property.
3363 View by jury of the premises.	3377 Entry of verdict.
3364 Admonitions when jury are permitted to separate.	
3365 Jury may take with them certain papers.	
3366 Deliberations of jury, how conducted.	
3367 May come into court for further instructions.	
3368 Proceedings in case a juror becomes sick.	

Jury, how drawn.

§ 3355. s 477. When the action is called for trial by jury, the clerk must draw from the trial jury box of the court the ballots containing the names of the jurors, until the jury is completed or the ballots are exhausted.

Challenges, peremptory, how taken.

§ 3356. s 478. Either party may challenge the jurors, but where there are several parties on either side, they must join in a challenge before it can be made. The challenges are to individual jurors, and are either peremptory or for

cause. Each party is entitled to three peremptory challenges. If no peremptory challenges are taken until the panel is full they must be taken by the parties alternately, commencing with the plaintiff.

§ 3357. s 479. Challenges for cause may be taken on Grounds of challenge. one or more of the following grounds:

1. A want of any of the qualifications prescribed by statute to render a person competent as a juror.

2. Consanguinity or affinity within the third degree to either party.

3. Standing in the relation of debtor or creditor, guardian and ward, master and servant, employer and clerk, or principal and agent to either party; or being a member of the family of either party; or a partner, or united in business with either party; or being surety on any bond or obligation for either party.

4. Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action, or being then a witness therein.

5. Pecuniary interest on the part of the juror in the event of the action; or in the main question involved in the action; except his interest as a member or citizen of a municipal corporation.

6. Having formed or expressed an unqualified opinion or belief as to the merits of the action, or main question involved therein; *Provided*, That the reading of newspaper accounts of the subject matter before the court, shall not disqualify a juror either for bias or opinion.

7. The existence of a state of mind in the juror, evincing enmity against, or bias to or against either party.

§ 3358. s 480. Challenges for cause must be tried by Challenges, how tried. the court. The juror challenged, and any other person, may be examined as a witness on the trial of the challenge.

§ 3359. s 481. As soon as the jury is completed, an oath must be administered to the jurors, in substance, that they and each of them will well and truly try the matter in issue between—the plaintiff, and——defendant, and a true verdict render according to the evidence. Jury to be sworn.

§ 3360. s 482. When the jury has been sworn, the trial Order of proceeding on trial. must proceed in the following order, unless the judge, for special reasons, otherwise directs:

1. The plaintiff, after stating the issue and his case, must produce the evidence on his part.

2. The defendant may then open his defense, and offer his evidence in support thereof.

3. The parties may then respectively offer rebutting evidence only, unless the court, for good reasons, in furtherance of justice, permit them to offer evidence upon their original case.

4. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the plaintiff must commence and may conclude the argument.

5. If several defendants, having separate defenses, appear by different counsel, the court must determine their relative order in the evidence and argument.

6. The court may then charge the jury.

Charge to the jury.

§ 3361. s 483. In charging the jury, the court may state to them all matters of law it thinks necessary for their information in giving their verdict, and if it state the testimony of the case it must inform the jury that they are the exclusive judges of all questions of fact. The court must furnish to either party, at the time, upon request, a statement in writing of the points of law contained in the charge, or sign, at the time, a statement of such points prepared and submitted by the counsel of either party.

Court must furnish, in writing, upon request, the points of law contained therein.

Special instructions.

§ 3362. s 484. Where either party asks special instructions to be given to the jury, the court must either give such instructions as requested, or refuse to do so, or give the instruction with a modification, in such manner that it may distinctly appear what instructions were given in whole or in part.

View by jury of the premises.

§ 3363. s 485. When in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted, in a body, under the charge of an officer, to the place which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.

§ 3364. s 486. If the jury are permitted to separate, either during the trial, or after the case is submitted to

them, they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

*Admonition
when jury are
permitted to
separate.*

§ 3365. s 487. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession, and they may also take with them notes of the testimony, or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

*Jury may take
with them
certain
papers.*

§ 3366. s 488. When the case is finally submitted to the jury they may decide in court, or retire for deliberation. If they retire, they must be kept together in a room or some other convenient place provided for them, under the charge of one or more officers, until they agree upon a verdict, or are discharged by the court. The officer must to the utmost of his ability keep the jury separate from other persons; he shall not suffer any communication to be made to them, or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict; and he must not before the verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

*Deliberation
of jury, how
conducted*

§ 3367. s 489. After the jury have retired for deliberation if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to, the parties or counsel.

*May come
into court for
further
instructions.*

§ 3368. s 490. If, after the impaneling of the jury, and before verdict, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case the trial may proceed with the other jurors, or another juror may be sworn and the trial begin anew; or the jury may be discharged, and a new jury, then or afterwards, impaneled.

*Proceedings
in case a
juror becomes
sick*

§ 3369. s 491. In all cases where the jury are discharged, or prevented from giving a verdict by reason of accident or

When prevented from giving verdict, the cause may be tried
 other cause during the progress of the trial, or after the cause is submitted to them, the action may be again tried, immediately or at a future time, as the court may direct.

While jury are absent court may adjourn from time to time
 § 3370. s 492. While the jury are absent the court may adjourn from time to time in respect to other business, but it is nevertheless open for every purpose connected with the cause submitted to the jury until a verdict is rendered, or the jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the court, in case of an agreement during a recess or adjournment for the day. A final adjournment of the court for the term discharges the jury.

Verdict, how declared
 § 3371. s 493. When the jury have agreed upon their verdict, they must be conducted into court, their names called by the clerk, and the verdict rendered by their foreman.

Form of.
 The verdict must be in writing, signed by the foreman, and must be read by the clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, they must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is his verdict. If any one answer in the negative, the jury must again be sent out.

Proceeding when verdict is informal
 § 3372. s 494. When the verdict is announced, if it is informal or insufficient, in not covering the issue submitted, it may be corrected by the jury under the advice of the court, or the jury may be again sent out.

General and special verdicts defined
 § 3373. s 495. The verdict of the jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the court. The special verdict must present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact must be so presented as that nothing shall remain to the court but to draw from them conclusions of law.

When a general or special verdict may be rendered
 § 3374. s 496. In an action for the recovery of money only, or specific real property, the jury, in their discretion may render a general or special verdict. In all other cases, the court may direct the jury to find a special verdict in

writing, upon all or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk and entered upon the minutes. When a special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court must give judgment accordingly.

§ 3375. s 497. When a verdict is found for the plaintiff, Verdict in actions for the recovery of money or on establishing a counter claim in an action for the recovery of money, or for the defendant, when a counter claim for the recovery of money is established exceeding the amount of the plaintiff's claim as established, the jury must also find the amount of the recovery.

§ 3376. s 498. In an action for the recovery of specific Verdict in actions for specific personal property personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if being in favor of the defendant, they also find that he is entitled to a return thereof, must find the value of the property, and if so instructed, the value of specific portions thereof, and may, at the same time, assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

§ 3377. s 499. Upon receiving a verdict, an entry must Entry of verdict be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and setting out the verdict at length, and where a special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

CHAPTER V.

TRIAL BY THE COURT.

SECTION.

3378 Trial by jury, when and how waived.

3379 Decision of court on question of fact, when to be filed.

SECTION.

3380 Facts found and conclusions of law must be separately stated; judgment on.

3381 Findings may be waived, how.

3382 Proceedings after determination of issue of law.

Trial by jury
when and how
waived.

§ 3378. s 503. Trial by jury may be waived by the several parties to an issue of fact in actions arising on contract, or for the recovery of specific real or personal property, with or without damages; and with the assent of the court, in other actions, in manner following:

1. By failing to appear at the trial.
2. By written consent, in person or by attorney, filed with the clerk.
3. By oral consent, in open court, entered in the minutes.

Decision of
court on
question of
fact, when to
be filed.

§ 3379. s 504. Upon a trial of a question of fact by the court, its decision must be given in writing and filed with the clerk within thirty days after the cause is submitted for decision.

Facts found
and conclu-
sions of law
must be
separately
stated;
judgment on.

§ 3380. s 505. In giving the decision, the facts found and the conclusions of law must be separately stated. Judgment upon the decision must be entered accordingly.

§ 3381. s 506. Findings of fact may be waived by the several parties to an issue of fact:

1. By failing to appear at the trial.
2. By consent in writing, filed with the clerk.
3. By oral consent, in open court, entered in the minutes.

Findings may
be waived,
how

§ 3382. s 507. On a judgment for the plaintiff upon an issue of law, he may proceed in the manner prescribed by the first two subdivisions of section four hundred and sixty (460), upon the failure to answer. If judgment be for the defendant upon an issue of law, and the taking of an account, or the proof of any fact, be necessary to enable the court to complete the judgment, a reference may be ordered, as in that section provided.

Proceedings
after
determination
of issue of law

CHAPTER VI.

REFERENCES AND TRIAL BY REFEREES.

SECTION.

3383 Reference ordered upon agree-
ment of parties, in what cases.
3384 Reference ordered on motions
in what cases.
3385 Number of referees, qualifica-
tions, etc.

SECTION.

3386 Either party may object.
3387 Objections, how disposed of.
3388 Referee to report within twenty
days.
3389 Effect of referee's finding.
3390 How excepted to, etc.

§ 3383. s 510. A referee may be ordered upon the agreement of the parties, filed with the clerk or entered in the minutes: Reference ordered upon agreement of parties, in what cases

1. To try any or all of the issues in an action or proceeding, whether of fact or of law, and to report a finding and judgment thereon.

2. To ascertain a fact necessary to enable the court to determine an action or proceeding.

§ 3384. s 511. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases: Reference ordered on motion, in what cases

1. When the trial of an issue of fact requires the examination of a long account on either side: in which case the referees may be directed to hear or decide the whole issue, or report upon any specific question of fact involved therein.

2. When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect.

3. When a question of fact, other than upon the pleadings, arises upon motion or otherwise in any stage of the action; or,

4. When it is necessary for the information of the court in a special proceeding.

§ 3385. s 512. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge must appoint one or more referees, not exceeding three, who reside Number of referees, qualifications, etc

in the district, in which the action or proceeding is triable, and against whom there is no legal objection.

Either party
may object

§ 3386. s 513. Either party may object to the appointment of any person as referee on one or more of the following grounds:

1. A want of any of the qualifications prescribed by statute to render a person competent as a juror.

2. Consanguinity or affinity within the third degree of either party.

3. Standing in relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of the family of either party, or a partner in business with either party, or being security on any bond or obligation for either party.

4. Having served as a juror or being a witness on any trial between the same parties for the same cause of action, or being then a witness in the cause.

5. Pecuniary interest on the part of such person in the event of the action, or in the main question involved in the action.

6. Having formed or expressed an unqualified opinion or belief as to the merits of the action.

7. The existence of a state of mind in such person evincing enmity against or bias to either party.

Objections,
how disposed
of

§ 3387. s 514. The objections taken to the appointment of any person as referee must be heard and disposed of by the court. Affidavits may be read and any person examined as a witness as to such objections.

Referee to
report within
twenty days

§ 3388. s 515. The referees must report their findings in writing to the court within twenty days after the testimony is closed, and the facts found and conclusions of law must be separately stated therein.

Effect of
referee's
finding

§ 3389. s 516. The finding of the referee upon the whole issue, must stand as the finding of the court; and upon filing the finding with the clerk of the court, judgment may be entered thereon in the same manner as if the action had been tried by the court.

How excepted
to, etc

§ 3390. s 517. The finding of the referee may be excepted to, and reviewed in like manner as if made by the court. When the reference is to report the facts, the findings reported has the effect of a special verdict.

CHAPTER VII.

EXCEPTIONS.

SECTION.

- 3391 Exception, what is when taken.
 3392 What deemed excepted to.
 3393 Exception, form of.
 3394 Bills of exception.
 3395 Bills of exception, preparation and settlement of; actions before a referee.
 3396 Exceptions after judgment, etc.

SECTION.

- 3397 When exception is refused, application to supreme court to prove the same, etc.
 3398 When decision excepted to was made by other officer; proceedings where judge ceases to hold office, etc.

§ 3391. s 522. An exception is an objection upon a matter of law to the decision made either before or after judgment by a court, tribunal, judge, or other judicial officer, in an action or proceeding. The exception must be taken at the time the decision is made, except as provided in the next section.

§ 3392. s 523. The verdict of the jury, the final decision in an action or proceeding, an interlocutory order or decision, finally determining the rights of the parties, or some of them; an order or decision from which an appeal may be taken; an order sustaining or overruling a demurrer, allowing or refusing to allow an amendment to a pleading, striking out a pleading or a portion thereof, refusing a continuance; an order made upon *ex parte* application, and an order or decision made in the absence of a party, are deemed to have been excepted to.

§ 3393. s 524. No particular form of exception is required, but when the exception is to the verdict or decision, upon the ground of the insufficiency of the evidence to justify it, the objection must specify the particulars in which such evidence is alleged to be insufficient. The objection must be stated with so much of the evidence or other matter as is necessary to explain it, and no more. Only the substance of the reporter's notes of the evidence shall be stated. Documents on file in the action or proceeding may be copied, or the substance thereof stated or a reference thereto, sufficient to identify them, may be made.

Bills of excep-
tions

§ 3394, s 525. A bill containing the exception to any decision may be presented to the court or judge for settlement at the time the decision is made, and after having been settled, shall be signed by the judge and filed with the clerk. When the decision excepted to is made by a tribunal other than a court, or by a judicial officer, the bill of exceptions shall be presented to and settled and signed by such tribunal or officer.

Bills of excep-
tions, prepara-
tion and settle-
ment of.

§ 3395, s 526. When a party desires to have exceptions taken at a trial settled in the bill of exceptions, he may, within ten days after the entry of judgment, if the action were tried with a jury, or after receiving notice of the entry of judgment, if the action were tried without a jury, or such further time as the court in which the action is pending, or a judge thereof may allow, prepare the draft of a bill, and serve the same, or a copy thereof, upon the adverse party. Such draft must contain all the exceptions taken upon which the party relies. Within ten days after such service the adverse party may propose amendments thereto, and serve the same, or a copy thereof, upon the other party. The proposed bill and amendments must, within ten days thereafter, be presented by the party seeking the settlement of the bill, to the judge who tried or heard the case, upon five days' notice to the adverse party, or be delivered to the clerk of the court for the judge. When received by the clerk he must immediately deliver them to the judge, if he be in the district; if he be absent from the district and either party desire the papers to be forwarded to the judge, the clerk must, upon notice in writing of such party, immediately forward them by mail or other safe channel; if not thus forwarded, the clerk must deliver them to the judge immediately after his return to the district. When received from the clerk, the judge must designate the time at which he will settle the bill, and the clerk must immediately notify the parties of such designation. At the time designated the judge must settle the bill. If the

Same.

Actions before
a referee

action was tried before a referee, the proposed bill, with the amendments, if any, must be presented to such referee for settlement within ten days after service of the amendments, upon notice of five days to the adverse party, and thereupon the referee shall settle the bill. If no amendments are served, or if served are allowed, the proposed bill may be presented, with the amendments, if any, to the judge, or

referee, for settlement, without notice to the adverse party. It is the duty of the judge or referee, in settling the bill, to strike out of it all redundant and useless matter, so that the exceptions may be presented as briefly as possible. When settled, the bill must be signed by the judge or referee, with his certificate to the effect that the same is allowed, and shall then be filed with the clerk.

§ 3396. s 527. Exceptions to any decision made after judgment may be presented to the judge at the time of such decision, and be settled or noted, as provided in section 525, and a bill thereof may be presented and settled afterwards, as provided in section 526, and within like periods after the entry of the order, upon appeal from which such decision is reviewable. Exceptions after judgment, etc.

§ 3397. s 528. If the judge in any case refuse to allow an exception in accordance with the facts, the party desiring the bill settled may apply, by petition, to the supreme court to prove the same. The application may be made in the mode and manner, and under such regulations as that court may prescribe; and the bill, when proven, must be certified by a justice as correct, and filed with the clerk of the court in which the action was tried, and when so filed, it has the same force and effect as if settled by the judge who tried the cause. When exception refused application to supreme court to prove the same, etc.

§ 3398. s 529. When the decision excepted to was made by any judicial officer other than a judge, the bill of exceptions shall be presented to such judicial officer, and be settled and signed by him in the same manner as it is required to be presented to, settled and signed by a court or judge. A judge or judicial officer may settle and sign a bill of exceptions after, as well as before he ceases to be such judge or judicial officer. If such judge or judicial officer before the bill of exceptions is settled, dies, is removed from office, becomes disqualified, is absent from the Territory, or refuses to settle the bill of exceptions, or if no mode is provided by law for the settlement of the same, it shall be settled and certified in such manner as the supreme court may, by its orders or rules, direct. Judges, judicial officers, and the supreme court shall respectively possess the same power in settling and certifying statements, as is by this section conferred upon them in settling and certifying bills of exceptions. When decision excepted to was made by other officer. Proceedings where judge ceases to hold office, etc.

CHAPTER VIII.

NEW TRIALS.

SECTION.

3399 New trial defined.

3400 When a new trial may be granted.

3401 On what papers moved.

3402 Notice of intention, when to be
filed and what to contain.

3403 Motions, when to be heard.

SECTION.

3404 What constitutes record to be
used on appeal; subsequent
statement.3405 New trial by order of court;
order, how reviewed.

3406 Motion, where may be heard.

New trial de-
fined.

§ 3399. s 533. A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury, or court, or by referees.

When a new
trial may be
granted.

§ 3400. s 534. The former verdict or other decision may be vacated, and a new trial granted on the application of the party aggrieved for any of the following causes materially affecting the substantial rights of such party:

1. Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court, or abuse of discretion by which either party was prevented from having a fair trial.

2. Misconduct of the jury, and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any questions submitted to them by the court, by a resort to the determination of chance, such misconduct may be proved by the affidavit of any one of the jurors.

3. Accident or surprise, which ordinary prudence could not have guarded against.

4. Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.

5. Excessive damages, appearing to have been given under the influence of passion or prejudice.

6. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

7. Error in law occurring at the trial, and excepted to by the party making the application.

§ 3401, s 535. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the last section, it must be made upon affidavit; for any other cause it may be made, at the option of the moving party, either upon the minutes of the court, or a bill of exceptions, or a statement of the case prepared as hereinafter provided.

§ 3402, s 536. The party intending to move for a new trial, must, within ten days after the verdict of the jury, if the action were tried by a jury, or after notice of the decision of the court or referee, if the action were tried without a jury, file with the clerk, and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits, or the minutes of the court, or a bill of exceptions, or a statement of the case:

On what papers moved.

Notice of intention, when to be filed and what to contain.

1. If the motion is to be made upon affidavits, the moving party must, within ten days after serving the notice, or such further time as the court in which the action is pending, or a judge thereof, may allow, file such affidavit with the clerk, and serve a copy upon the adverse party, who shall have ten days to file counter affidavits, a copy of which must be served upon the moving party.

2. If the motion is to be made upon a bill of exceptions, and no bill has already been settled as hereinbefore provided, the moving party shall have the same time after serving of the notice, to prepare and obtain a settlement of a bill of exceptions, as is provided after the entry of judgment, or after receiving notice of such entry, as provided by section 526, and the bill shall be prepared and settled in a similar manner. If a bill of exceptions has been already settled and filed, when the notice of motion is given, such bill shall be used on the motion.

3. If the motion is to be made on a statement of the case, the moving party must, within ten days after service of the notice, or such further time as the court in which the action is pending, or the judge thereof, may allow, prepare a draft of the statement, and serve the same, or a copy thereof, upon the adverse party. If such proposed statement be not agreed to by the adverse party, he must, within ten days thereafter, prepare amendments thereto, and serve the same or a copy thereof, upon the moving party. If the amend-

ments be adopted, the statement shall be amended accordingly, and then presented to the judge who tried or heard the cause for settlement, or be delivered to the clerk of the court for the judge. If not adopted, the proposed statement and amendments shall, within ten days thereafter, be presented by the moving party to the judge, upon five days' notice to the adverse party, or delivered to the clerk of the court for the judge; and thereupon, the same proceedings for the settlement of the statement shall be taken by the parties, and the clerk and judge, as are required for the settlement of bills of exceptions by section 526. If the action was heard by a referee, the same proceedings shall be had for the settlement of the statement by him, as are required by that section for the settlement of bills of exception by a referee. If no amendments are served within the time designated, or if served, are allowed, the proposed statement and amendments, if any, may be presented to the judge or referee, for settlement, without notice to the adverse party. When the notice of motion designates, as the ground of the motion, the insufficiency of the evidence to justify the verdict, or other decision, the statement shall specify the particulars in which such evidence is alleged to be insufficient. When the notice designates as the ground of the motion, errors in law occurring at the trial, and excepted to by the moving party, the statement shall specify the particular errors upon which the party will rely. If no such specifications be made, the statement shall be disregarded on the hearing of the motion. It is the duty of the judge, or referee, in settling the statement, to strike out of it all redundant and useless matter, and to make the statement truly represent the case, notwithstanding the assent of the parties to such redundant or useless matter, or to any inaccurate statement. When settled, the statement shall be signed by the judge or referee with his certificate to the effect that the same is allowed, and shall then be filed with the clerk.

4. When the motion is made upon the minutes of the court, and the ground of the motion is the insufficiency of the evidence to justify the verdict or other decision, the notice of motion must specify the particulars in which the evidence is alleged to be insufficient; and, if the ground of the motion be errors in law occurring at the trial and excepted to by the moving party, the notice must specify the particular

errors upon which the party will rely. If the notice do not contain the specifications here indicated, when the motion is made on the minutes of the court, the motion must be denied.

§ 3403. s 537. The application for a new trial shall be heard at the earliest practicable period after notice of the motion, if the motion is to be heard upon the minutes of the court, and in other cases, after the affidavits, bill of exceptions, or statement, as the case may be, are filed, and may be brought to a hearing upon motion of either party. On such hearing reference may be had in all cases to the pleadings and orders of the court on file, and when the motion is made on the minutes, reference may also be had to any depositions, documentary evidence, and phonographic report of the testimony on file. Motion when to be heard.

§ 3404. s 538. The judgment roll and the affidavits, or bill of exceptions, or statement, as the case may be, used on the hearing, with a copy of the order made, shall constitute the record to be used on appeal from the order granting or refusing a new trial, unless the motion be made on the minutes of the court, and in that case the judgment roll and a statement to be subsequently prepared with a copy of the order, shall constitute the record on appeal. Such subsequent statement shall be proposed by the party appealing, or intending to appeal, within ten days after the entry of the order, or such further time as the court in which the action is pending, or a judge thereof, may allow, and the same, or a copy thereof, be served upon the adverse party, who shall have ten days thereafter to prepare amendments thereto, and serve the same, or a copy thereof, upon the party appealing or intending to appeal; and thereafter proceedings shall be had, and within like periods, for the settlement of the statement, as provided by section 536, but the statement shall only contain the grounds argued before the court for a new trial, and so much of the evidence or other matters as may be necessary to explain them; and it shall be the duty of the judge to exclude all other evidence or matter from the statement. What constitutes record to be used on appeal.

§ 3405. s 539. The verdict of a jury may also be vacated, and a new trial granted by the court, in which the action is pending, on its own motion, without the application of either of the parties, when there has been such a plain disregard by the jury of the instructions of the court, or the Subsequent statement.

Order, how
reviewed.

evidence in the case, as to satisfy the court that the verdict was rendered under a misapprehension of such instructions, or under the influence of passion or prejudice. The order of the court may be reviewed on appeal in the same manner as orders made on motions for a new trial, and a statement to be used on such appeal may be prepared in the same manner as statements after a motion is heard upon the minutes of the court as provided in section 538.

Motion, where
may be heard.

§ 3406. s 540. When the action is tried by a district judge, out of the county of his residence, the motion for a new trial may, upon the consent of the parties, be brought to a hearing before such judge at chambers, or in open court in any other county in the Territory.

CHAPTER IX.

MANNER OF GIVING AND ENTERING JUDGMENTS.

SECTION.	SECTION.
3407 Judgment to be entered in twenty-four hours, etc.	3413 Judgment roll, what constitutes.
3408 Case may be brought before the court for argument.	3414 Judgment lien, when it begins and expires.
3409 When counter claim established exceeds plaintiff's demand.	3415 Docket, how kept and what to contain.
3410 In replevin, judgment to be in the alternative and with damages.	3416 Docket to be open for inspection without charge.
3411 Judgment book to be kept by clerk.	3417 Transcript to be filed in any county and judgment to become a lien there.
3412 If a party die after verdict, judgment may be entered, but not to be a lien.	3418 Satisfaction of judgment, how made.

Judgment to
be entered in
twenty-four
hours, etc.

§ 3407. s 545. When trial by jury has been had judgment must be entered by the clerk, in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the court order the case to be reserved for argument, or further consideration or grant a stay of proceedings.

§ 3408. s 546. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the court for argument.

Case may be brought before the court for argument.

§ 3409. s 547. If a counter claim established at the trial exceed the plaintiff's demand, judgment for the defendant must be given for the excess: or if it appear that the defendant is entitled to any other affirmative relief, judgment must be given accordingly.

When counter claim established exceeds plaintiff's demand.

§ 3410. s 548. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same. In an action on a contract or obligation in writing for the direct payment of money, made payable in a specified kind of money or currency, judgment for the plaintiff, whether it be by default or after verdict, may follow the contract or obligation, and be made payable in the kind of money or currency specified therein; and in all actions for the recovery of money, if the plaintiff allege in his complaint that the same was understood and agreed by the respective parties to be payable in a specified kind of money or currency, and this fact is admitted by the default of the defendant or established by evidence, the judgment for the plaintiff must be made payable in the kind of money or currency so alleged in the complaint; and in an action against any person for the recovery of money received by such person in a fiduciary capacity, or to the use of another; judgment for the plaintiff must be made payable in the kind of money or currency so received by such person.

In replevin, judgment to return the property, and with damages.

§ 3411. s 549. The clerk must keep, with the records of the court a book to be called the judgment book, in which judgments must be entered.

Judgment book to be kept by the clerk.

§ 3412. s 550. If a party die after a verdict or decision upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon. Such judgment is not a lien on the real property of the deceased party, but is payable in the course of administration on his estate.

If a party die after verdict, judgment may be entered, but not to be a lien.

Judgment roll,
what consti-
tutes.

§ 3413. s 551. Immediately after entering the judgment the clerk must attach together and file the following papers, which constitute the judgment roll:

1. In case the complaint be not answered by any defendant, the summons, with the affidavit or proof of service, and the complaint, with a memorandum endorsed thereon that the default of the defendant in not answering was entered, and a copy of the judgment.

2. In all other cases, the pleadings, a copy of the verdict of the jury, or finding of the court or referee, all bills of exception taken and filed, and a copy of any order made on demurrer, or relating to a change of parties, and a copy of the judgment. If there are two or more defendants in the action, and any one of them has allowed judgment to pass against him by default, the summons, with proof of its service upon such defendant, must also be added to the other papers mentioned in this subdivision.

Judgment lien,
when it begins
and when
expires.
March 5, 1888.

§ 3414. s 552. Immediately after filing the judgment roll the clerk must make the proper entries of the judgment, under appropriate heads, in the docket kept by him, and from the time the judgment is docketed it becomes a lien upon all the real property of the judgment debtor not exempt from execution in the district, owned by him at the rendition of the judgment, or by him thereafter acquired during the existence of said lien in his own right. The lien shall continue for five years, unless the judgment be previously satisfied, or unless the enforcement of the judgment be stayed on appeal by the execution of a sufficient undertaking as provided in this Code, in which case the lien of the judgment ceases.

Docket how
kept and what
to contain.

§ 3415. s 553. The docket mentioned in the last section is a book which the clerk keeps in his office with each page divided into columns and headed as follows: judgment debtors; judgment creditors; judgment; time of entry; when entered in judgment book; appeals; when taken; judgment of appellate court; satisfaction of judgment; when entered. If judgment be for the recovery of money or damages, the amount must be stated in the docket under the head of judgment; if the judgment be for any other relief, a memorandum of the general character of the relief granted must be stated. The names of the defendants must be entered in the docket in alphabetical order

§ 3416. s 554. The docket kept by the clerk is open at all times during office hours for the inspection of the public without charge: the clerk must arrange the several dockets kept by him in such a manner as to facilitate their inspection.

Docket to be open for inspection without charge.

§ 3417. s 555. A transcript of the original docket, certified by the clerk, may be filed with the recorder of any county, and from the time of the filing the judgment becomes a lien upon all the real property of the judgment debtor not exempt from execution in such county, owned by him at the time, or which he may afterwards, and before the lien expires, acquire. The lien continues for five years, unless the judgment be previously satisfied.

Transcript to be filed in any county, and judgment to become a lien there.

§ 3418. s 556. Satisfaction of judgment may be entered in the clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of conveyance of real property, by the judgment creditor, or by his indorsement on the face, or on the margin of the record of the judgment, or by the attorney, unless a revocation of his authority is filed. Whenever a judgment is satisfied in fact, otherwise than upon an execution, the party or attorney must give such acknowledgment or make such indorsement, and upon motion, the court may compel it, or may order the entry of satisfaction to be made without it.

Satisfaction of judgment, how made.

TITLE IX.

OF THE EXECUTION OF THE JUDGMENT IN CIVIL ACTIONS.

CHAPTER I.

THE EXECUTION.

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Within what
time execu-
tion may issue.

§ 3419. s 560. The party in whose favor judgment is given may, at any time within five years after the entry thereof, have a writ of execution issued for its enforcement.

§ 3420. s 561. The writ of execution must be issued in the name of the people of the Territory of Utah; sealed with the seal of the court, and subscribed by the clerk, and be directed to the United States marshal, or to the sheriff of the county in which the writ is to be executed, and it must intelligibly refer to the judgment, stating the court, the district where the judgment roll is filed, the name of the parties, the judgment, and if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money or currency as provided in section 548, the execution must also state the kind of money or currency in which the judgment is payable, and must require substantially as follows:

Who may issue the execution, its form, to whom directed, and what it shall require.

1. If it be against the property of the judgment debtor it must require the officer to satisfy the judgment, with interest, out of the personal property of such debtor; and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter; or if the execution be issued to a county in a judicial district other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the recorder of such county, stating such day, or any time thereafter.

2. If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants, or trustees, it must require the officer to satisfy the judgment with interest out of such property.

3. If it be against the person of the judgment debtor, it must require the officer to arrest such debtor, and commit him to the jail of the county until he pay the judgment with interest or be discharged according to law.

4. If it be issued on a judgment made payable in a specified kind of money or currency as provided in section 548, it must also require the officer to satisfy the same in the kind of money or currency, in which said judgment is made payable, and the officer must refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor he must refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. The officer

collecting money or currency in the manner required by this Chapter must pay to the plaintiff or party entitled to recover the same kind of money or currency received by him, and in case of neglect or refusal so to do, he shall be liable on his official bond to the judgment creditor in three times the amount of money so collected.

5. If it be for the delivery of the possession of real or personal property, it must require the officer to deliver the possession of the same, describing it, to the party entitled thereto, and may at the same time require the officer to satisfy any costs, damages, rents, or profits, recovered by the same judgment out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered to be specified therein if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property, as provided in the first subdivision of this section.

When made
returnable

§ 3421. s 562. The execution may be made returnable at any time not less than ten, nor more than sixty days after its receipt by the officer, to the clerk with whom the judgment roll is filed. When the execution is returned the clerk must attach it to the judgment roll. If any real estate be levied upon, the clerk must record the execution and the return thereto at large, and certify the same under his hand as true copies, in a book to be called the "execution book," which book must be indexed with the names of the plaintiffs and defendants in execution, alphabetically arranged, and kept open at all times during office hours for the inspection of the public without charge. It is evidence of the contents of the originals whenever they or any part thereof, may be destroyed, mutilated or lost.

Judgment,
what may di-
rect.

Arrest of de-
fendant.

§ 3422. s 563. When the judgment is for money, or the possession of real or personal property, the same may be enforced by a writ of execution; and if the judgment direct that the defendant be arrested, the execution may issue against the person of the judgment debtor, after the return of an execution against his property unsatisfied in whole or in part. When the judgment requires the sale of property, the same may be enforced by a writ reciting such judgment, or the material parts thereof, and directing the proper officer to execute the judgment, by making the sale and applying the proceeds in conformity therewith. When the judgment requires the per-

formance of any other act than as above designated, a certified copy of the judgment may be served upon the party against whom the same is rendered, or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the court.

§ 3423. s 564. In all cases other than for the recovery of money, the judgment may be enforced or carried into execution after the lapse of five years from the date of its entry, by leave of the court, upon motion, or by judgment for that purpose, founded upon supplemental pleadings.

Execution,
after five
years.

§ 3424. s 565. Notwithstanding the death of a party after the judgment, execution thereon may be issued, or it may be enforced, as follows:

When execu-
tion may issue
against the
property of a
party after his
death.

1. In the case of the death of the judgment creditor, upon the application of his executor or administrator, or successor in interest.

2. In case of the death of the judgment debtor, if the judgment be for the recovery of real or personal property or the enforcement of a lien thereon.

§ 3425. s 566. Where the execution is against the property of the judgment debtor, it may be issued to the United States marshal or to the sheriff of any county in the Territory where the property may be situated. Where it requires the delivery of real or personal property, it must be issued to the United States marshal, or to the sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties.

Execution,
how and to
whom issued.

§ 3426. s 567. All goods, chattels, moneys, and other property both real and personal, or any interest therein of the judgment debtor not exempt by law, and all property and rights of property seized and held under attachment in the action, are liable to execution. Shares and interest in any corporation or company, and debts and credits, and all other property both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be attached on execution in like manner as on writs of attachment. Gold dust and bullion must be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy on personal property, it shall not be affected by the execution.

What shall be
liable to be
seized in ex-
ecution

Not to be
affected until
a levy is made.

§ 3427. s 568. If the property levied on be claimed by

When property is claimed by a third party, how the right of property is tried.

a third person as his property, the officer may summon from the county six persons qualified as jurors between the parties to try the validity of the claim. He must also give notice of the claim and of the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury and the witnesses must be sworn by the officer, and if their verdict be in favor of the claimant, the officer may relinquish the levy, unless the judgment creditor give him a sufficient indemnity for proceeding thereon. The fees of the jury, officer and the witnesses, must be paid by the claimant if the verdict be against him; otherwise by the plaintiff. Each party must deposit with the officer, before the trial, the amount of his fees and the fees of the jury, and the officer must pay the same, less his own fees, to the prevailing party.

Property of married woman exempt from execution.

§ 3428. s 569. All real and personal estate belonging to any married woman, at the time of her marriage, or to which she subsequently becomes entitled in her own right, and all the rents, issues and profits thereof, and all compensation due or owing for her personal services, is exempt from execution against her husband.

What exempt from execution.

§ 3429. s 570. The following property is exempt from execution, except as herein otherwise specially provided:

Same.

1. Chairs, tables, desks and books, to the value of two hundred dollars, belonging to the judgment debtor.

2. Necessary household, table and kitchen furniture, belonging to the judgment debtor, to the value of three hundred dollars; also one sewing machine, hanging pictures, oil paintings and drawings, drawn or painted by any member of the family, and portraits and their necessary frames, provisions, actually provided for individual or family use, sufficient for three months; two cows with their sucking calves, and two hogs and all sucking pigs.

Same.

3. The farming utensils or implements of husbandry of a farmer not exceeding in value the sum of three hundred dollars; also two oxen, or two horses, or two mules, and their harness, one cart or wagon, and food for such oxen, horses, cows or mules for sixty days; also, all seed grain, or vegetables actually provided, reserved, or on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value the sum of two hundred dollars.

4. The tools, tool-chest and implements of a mechanic ^{same.} or artisan, necessary to carry on his trade, not exceeding in value the sum of five hundred dollars; the notarial seal and records of a notary public; the instruments and chests of a surgeon, physician, surveyor, and dentist, necessary to the exercise of their professions, with their scientific and professional libraries, and the law professional libraries and office furniture of attorneys, counselors and judges, and the libraries of ministers of the gospel.

5. The cabin or dwelling of a miner not exceeding in ^{same.} value the sum of five hundred dollars; also his sluices, pipes, hose, windlass, derrick, cars, pumps, and tools not exceeding in value two hundred dollars.

6. Two oxen, two horses or two mules, and their harness; ^{same.} and a cart or wagon, one dray or truck, by the use of which a cartman, drayman, truckman, huckster, peddler, hackman, teamster, or other laborer habitually earns his living; and one horse with vehicle and harness, or other equipments, used by a physician, surgeon or minister of the gospel, in making his professional visits, with hay and grain for said horse sufficient for three months.

7. One-half of the earnings of the judgment debtor for ^{same.} his personal services, rendered at any time within sixty days next preceding the levy of execution or levy of attachment, when it appears by the debtor's affidavit or otherwise, that such earnings are necessary for the use of his family, residing in this Territory, supported wholly or in part by his labors.

8. All moneys, benefits, privileges, or immunities accru- ^{same.} ing, or in any manner growing out of any life insurance on the life of the debtor, if the annual premiums paid do not exceed five hundred dollars.

9. All arms, ammunition, uniforms and accoutrements, ^{same.} required by law to be kept by any person.

10. All court houses, jails, public offices and build- ^{same.} ings, school houses, houses of public worship, lots, grounds and personal property appertaining thereto, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the court house, jail and public offices belonging to any county in this Territory, or for the use of schools or houses of public worship, and all cemeteries, public squares, parks and places, public buildings, town halls, public markets, buildings for the use of the fire departments and military or-

ganizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament or public use, or for the use of any fire or military company, now existing, or which may be under the laws of this Territory hereinafter organized.

Same.

11. If the debtor be the head of a family, there shall be a further exemption of a homestead, to be selected by the debtor, consisting of lands, together with the appurtenances and improvements thereon, not exceeding in value the sum of one thousand dollars, for the judgment debtor, and the further sum of five hundred dollars for his wife and two hundred and fifty dollars for each other member of the family. If the homestead selected by the debtor is of a greater value than is exempted under this section, it shall be optional with the judgment debtor to permit the same to be partitioned or to be sold, and to receive in money the value of the homestead as provided in this section. If the debtor so elect, the homestead may be sold as other lands are sold on execution, and, after paying the debtor the value of the homestead, the balance of the money shall be applied upon the judgment; *Provided*, That the homestead shall not be sold if the officer do not receive a bid for a greater amount than the value of the homestead exempted in this section. If sold on the judgment, the money paid the debtor for the homestead shall be exempt from that or any other execution. If the officer having the execution, and the judgment debtor, cannot agree as to the value of the homestead, or the partition thereof, or as to the quantity and value of any of the articles of personal property, in this section exempted, the officer shall select one person and the debtor another person, both being householders of the vicinity, to whom the officer shall administer an oath, to fairly and justly appraise and set apart the exempt property of the judgment debtor, concerning which there is a disagreement between him and the officer. If the disagreement relates to the value of the homestead, or to the partition thereof, the appraisers shall report to the officer their appraisal of the property selected for the homestead. If the debtor elect to have the property partitioned, it shall be the duty of the appraisers to set apart such a homestead as the judgment debtor shall elect and be entitled to, under the provisions of this section. In case of the disagreement of the

appraisers, they shall choose a third person, who shall also be sworn, and the decision of any two of said appraisers, when made, shall be final. The property not set apart as a homestead shall be subject to sale, under execution, the proceeds to be applied on the judgment. No article, however, or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its purchase price, or any portion thereof, or upon a judgment of foreclosure of a mortgage or a mechanics' or laborers' lien thereon, or exempt from sale for taxes. None of the exemptions made in this section are for the benefit of non-residents or persons about to depart from the Territory with the intention of removing their effects therefrom; but their property is liable to execution, with the exception of ordinary wearing apparel.

March 11, 1886.

§ 3430. s 571. The officer must execute the writ against the property of the judgment debtor, by levying on a sufficient amount of property, if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff, or his attorney, so much of the proceeds as will satisfy the judgment; any excess in the proceeds over the judgment and accruing costs, must be returned to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within view of the officer, he must levy only on such part of the property as the judgment debtor may indicate, if the property indicated be amply sufficient to satisfy the judgment and costs.

Writ how executed.

§ 3431. s 572. Before the sale of the property on execution, notice thereof must be given as follows:

Notice of sale how given.

1. In case of perishable property, by posting written notice of the time and place of sale in three public places of the precinct, or city, where the sale is to take place, for such a time as may be reasonable, considering the character and condition of the property.

2. In case of other personal property, by posting a similar notice in three public places of the precinct, or city where the sale is to take place, for not less than five, nor more than ten days.

3. In case of real property, by posting a similar notice, particularly describing the property, for twenty days, in

three public places of the precinct, or city, where the property is situated, and also where the property is to be sold, and publishing a copy thereof once a week for the same period in some newspaper published in the county, if there be one.

4. When the judgment under which this property is to be sold is made payable in a specified kind of money or currency, the several notices required by this section must state the kind of money or currency in which bids may be made at such sale, which must be the same as that specified in the judgment.

Selling without notice, what penalty attached.

§ 3432. s 573. An officer selling without the notice prescribed by the last section, forfeits five hundred dollars to the aggrieved party, in addition to his actual damages; and a person wilfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale), forfeits five hundred dollars.

Sale may be postponed, when.

§ 3433. s 574. If, at the time appointed for the sale of any real or personal property on execution, the officer shall deem it expedient, and for the interest of all persons concerned, to postpone the sale for want of purchasers or other sufficient cause, he may postpone the same from time to time until the same shall be completed; and in every such case he shall make public declaration thereof at the time and place previously appointed for the sale, and if such postponement be for a longer time than twenty-four hours, notice thereof shall be given in the same manner as the original notice of such sale is required to be given.

No proceedings vacated by death of officer.

§ 3434. s 575. When an officer shall have begun to serve an execution, and shall die, or be incapable of completing the service and return thereof, the same may be completed by any other officer who might by law have executed the same if originally delivered to him; and if the first officer shall not have made a certificate of his doings, the second officer shall certify whatever he shall find to have been done by the first, and shall add thereto a certificate of his own doings in completing the service.

When officer may serve execution after return day.

§ 3435. s 576. When an officer shall have begun to serve an execution issued out of any court of record, on or before the return day of such execution, he may complete the service and return thereof after such return day.

§ 3436. s 577. All sales of property under execution must be made at auction, to the highest bidder, between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more can be sold. Neither the officer holding the execution, nor his deputy, can become a purchaser, or be interested in any purchase at such sale. When the sale is of personal property, capable of manual delivery, it must be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, and consisting of several known lots or parcels, they must be sold separately; or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion must be thus sold. All sales of real property must be made at the court house of the county in which the property, or some part thereof, is situated. The judgment debtor, if present at the sale, may also direct the order in which the property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the officer must follow such directions.

Sales, how conducted.

Neither the officer nor his deputy to be a purchaser.

Real and personal property how sold.

Judgment debtor present may direct order of sale, and the officer shall follow his directions.

§ 3437. s 578. If a purchaser refuse to pay the amount bid by him for the property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, from the bidder so refusing, in any court of competent jurisdiction.

Proceedings on refusal of purchaser to pay purchase money.

§ 3438. s 579. When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

When sheriff may refuse bid.

§ 3439. s 580. The two preceding sections must not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

Two preceding sections not to make officer liable, etc.

§ 3440. s 581. When the purchaser of any personal property, capable of manual delivery, pays the purchase money, the officer making the sale shall deliver to the purchaser the property, and if desired, execute and deliver to him a certificate of the sale and payment. Such certificate conveys to the purchaser all the right, title and interests

Personal property not capable of manual delivery, how delivered to purchaser.

which the debtor had in and to such property on the day the execution was levied.

Personal prop-
erty not capa-
ble of manual
delivery, how
sold and how
delivered

§ 3441. s 582. When the purchaser of any personal property, not capable of manual delivery, pays the purchase money, the officer making the sale must execute and deliver to the purchaser a certificate of sale and payment. Such certificate conveys to the purchaser all right, title and interest which the debtor had in, and to such property on the day the execution or attachment was levied.

Real property,
when absolute
sale or not.

§ 3442. s 583. Upon a sale of real property, the purchaser is substituted to and acquires all the right, title, interest and claim of the judgment debtor thereto; and when the estate is less than a leasehold of two years unexpired term, the sale is absolute. In all other cases, the real property is subject to redemption as provided in this chapter. The officer must give to the purchaser a certificate of the sale, containing:

In the latter
case, what the
certificate
must contain.

1. A particular description of the real property sold.
2. The price bid for each distinct lot or parcel.
3. The whole price paid.

4. When subject to redemption, it must be so stated, and when the judgment, under which the sale has been made payable in a specified kind of money or currency, the certificate must also state the kind of money or currency in which such redemption may be made, which must be the same as that specified in the judgment. A duplicate of such certificate must be filed by the officer in the office of the recorder of the county.

Real property
so sold, by
whom it may
be redeemed.

§ 3443. s 584. Property sold subject to the redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided by the following persons or their successors in interest:

1. The judgment debtor, or his successor in interest, in the whole or any part of the property.

2. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are in this Chapter termed redemptioners.

When it may
be redeemed,
and redemp-
tion money.

§ 3444. s 585. The judgment debtor, or a redemptioner, may redeem the property from the purchaser within six months after the sale, on paying the purchaser the amount

of his purchase, (in the kind of money or currency specified in the judgment, if any be specified), with six per cent. thereon in addition, together with the amount of any assessment, or taxes, which the purchaser may have paid thereon after the purchase, and interest on such amount; and if the purchaser be also a creditor, having a lien prior to that of a redemptioner, other than the judgment under which the purchase was made, the amount of such lien, with interest.

§ 3445. s 586. If the property be so redeemed by a re-
 demptioner, another redemptioner may, within sixty days When judgment debtor or other redemptioner may redeem. after the last redemption, and within six months after the sale, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with three per cent. thereon in addition and the amount of any assessment, or tax, which the last redemptioner may have paid thereon after the redemption by him, with interest on such amount and in addition, the amount of any liens held by said last redemptioner prior to his own, with interest; but the judgment, under which the property was sold, need not be so paid as a lien. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, and within six months after the sale, on paying the sum paid on the last previous redemption with three per cent. thereon in addition, and the amount of any assessments, or taxes, which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with interest. Written notice of redemption must be given to the officer, Notice of redemption. and a duplicate filed with the recorder of the county; and if any taxes or assessments are paid by the redemptioner, or if he has, or acquires any lien, other than that upon which the redemption was made, notice thereof must in like manner be given to the officer, and filed with the recorder; and if such notice be not filed, the property may be redeemed without paying such tax, assessment, or lien. If no redemption be made within six months after the sale, the purchaser, or his Conveyance. assignee, is entitled to a conveyance; or if so redeemed, whenever sixty days have elapsed, and no other redemption has been made, and notice thereof given, the time for redemption by a redemptioner has expired, and the last redemptioner,

or his assignee, is entitled to deed from the officer, at the expiration of six months after the sale; but in all cases the judgment debtor shall have the entire period of six months from the date of the sale to redeem the property. If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate. Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption, acknowledged and proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the recorder of the county in which the property is situated, and the recorder must note the record thereof in the margin of the record of the certificate of sale.

In the case of redemption to whom the payments are to be made.

§ 3446. s 587. The payments mentioned in the last two sections may be made to the purchaser or redemptioner, or for him to the officer who made the sale. When the judgment, under which the sale has been made, is payable in a specified kind of money, or currency, payments must be made in the same kind of money, or currency, and a tender of the money is equivalent to payment.

What a redemptioner must do in order to redeem.

§ 3447. s 588. A redemptioner must produce to the officer, or person, from whom he seeks to redeem, and serve with his notice to the officer:

1. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court or recorder of the county where the judgment is docketed or filed; or if he redeem upon a mortgage, or other lien, a note of the record thereof certified by the recorder.

2. A copy of an assignment necessary to establish his claim, verified by the affidavit of himself, or of subscribing witnesses thereto; and,

3. An affidavit by himself, or his agent, showing the amount then actually due on the lien.

Until the expiration of redemption time court may restrain waste on the property.

§ 3448. s 589. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser, or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterwards,

during the period allowed for redemption, to continue to use ^{What is not considered waste.} it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family while he occupies the property.

§ 3449. s 590. The purchaser from the time of sale ^{Rents and profits} until a redemption, and a redemptioner from the time of his redemption until another redemption, is entitled to receive from the tenant in possession, the rents of the property sold or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or his or their assigns, from the property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid, and if the redemptioner or judgment debtor before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor, or his assigns, a written and verified statement of the amounts of such rents and profits thus received, the period for redemption is extended five days after such sworn statement is given by such purchaser or his assigns to such redemptioner or debtor. If such purchaser, or his assigns, shall for a period of one month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may, within sixty days after said demand bring an action in any court of competent jurisdiction, to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.

§ 3450. s 591. If the purchaser of real property sold on execution, or his successors in interest, be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid with interest, from the judgment creditor. If the purchaser of property at an officer's sale or his successor in interest fail to recover possession in consequence of irregularity in the proceedings concerning the sale or because the property sold was not subject to execution and sale, the court having jurisdiction thereof, must, after notice, and on motion of such party in interest, or his attorney, revive the original judgment in the name of ^{If purchaser of real property be evicted for irregularities in sale, what he may recover and from whom.} ^{When judgment to be revived.}

the petitioner for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and the judgment so revived has the same force and effect as would an original judgment of the date of the revival, and no more.

Party who
pays more
than his share
may compel
contribution.

§ 3451. s 592. When upon an execution against several persons, more than a due proportion of the judgment is satisfied out of the proceeds of the sale of the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security, for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such case, the person so paying, or contributing, is entitled to the benefit of the judgment, to enforce contribution or repayment, if, within ten days after his payment, he file with the clerk of the court where the judgment was rendered, notice of his payment and claim to contribution or repayment. Upon a filing of such notice, the clerk must make an entry thereof in the margin of the docket.

CHAPTER II.

PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

SECTION.	SECTION.
3452 Debtor required to answer concerning his property, when.	3456 Witnesses required to testify.
3453 Proceedings to compel debtor to appear; in what cases he may be arrested; what bail may be given.	3457 Judge may order property to be applied on execution.
3454 Any debtor of the judgment debtor, may pay the latter's creditor.	3458 Proceedings upon claim of another party to property, or on denial of indebtedness to judgment debtor.
3455 Examination of debtors of judgment debtors, or of those having property belonging to him.	3459 Disobedience of orders, how punished; when court must issue conveyance.

§ 3452. s 594. When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment issued to a proper officer is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, is entitled to an order from the judge of the court requiring such judgment debtor to appear, and answer upon oath concerning his property, before such judge, or referee appointed by him, at a time and place specified in the order; but no judgment debtor must be required to attend before a judge, or referee, out of the judicial district in which he resides.

§ 3453. s 595. After the issuing of an execution against property, and upon proof by affidavit of a party, or otherwise, to the satisfaction of the court, or the judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court, or judge may, by an order, require the judgment debtor to appear at a specified time and place before such judge, or referee appointed by him, to answer concerning the same, and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment, as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit

Debtor required to answer concerning his property, when.

Proceedings to compel debtor to appear.

In what cases
he may be ar-
rested.

of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the United States marshal, or the sheriff of the county, to arrest the debtor, and bring him before such judge. Upon being brought before the judge, he may be ordered to enter into an undertaking, with sufficient surety, that he will attend from time to time, before the judge or referee, as may be directed during the pendency of the proceedings, and until the final determination thereof, and will not, in the meantime, dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison.

Any debtor
of the judg-
ment debtor
may pay the
debtor's credi-
tor.

§ 3454. s 596. After the issuing of an execution against property, and before its return, any person indebted to the judgment debtor, may pay to the officer the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the officer's receipt is a sufficient discharge for the amount paid.

Examination
of debtors
of judgment
debtors, or of
those having
property be-
longing to him.

§ 3455. s 597. After the issuing, or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the judge may, by an order, require such person or corporation, or an officer or member thereof, to appear at a specified time and place, before him, or a referee appointed by him, and answer concerning the same.

Witnesses re-
quired to test-
ify.

§ 3456. s 598. Witnesses may be required to appear and testify before the judge, or referee, upon any proceeding under this Chapter in the same manner as upon the trial of an issue.

Judge may
order property
to be applied
on execution.

§ 3457. s 599. The judge, or referee, may order any property of the judgment debtor not exempt from execution, in the hands of such debtor, or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment.

Proceedings
upon claim of
another party
to property, or
on denial of
indebtedness
to judgment
debtor.

§ 3458. s 600. If it appears that a person, or corporation, alleged to have property of the judgment debtor, or to be indebted to him, claims an interest in the property, adverse to him, or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to in-

stitute an action against such person, or corporation, for the recovery of such interest or debt; and the court or judge may, by order, forbid a transfer, or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge granting the same, or the court in which the action is brought, at any time, upon such terms as may be just.

§ 3459. § 601. If any person, party, or witnesses disobey an order of the referee, properly made in the proceedings before him under this Chapter, he may be punished by the court, or judge, ordering the reference, for a contempt. When the judgment requires the person against whom it is rendered to execute and deliver to any other person, a conveyance of any specific real property, and the person against whom it is rendered, shall refuse or neglect to execute and deliver said conveyance for five days after the service upon him of a certified copy of such judgment, or if he is absent or concealed, so that service of such certified copy can not be had, upon proof, satisfactory to the court, that such service has been made, or that it cannot be made by reason of such absence or concealment, the person entitled to the conveyance may obtain from the court an order that the certified copy of the judgment, together with the order, be recorded by the recorder of deeds of the county where the real property is situated, and when recorded, it shall give to the person entitled to such conveyance a right to the possession of the real property described in the judgment, and to hold the same according to the terms of the conveyance ordered, in like manner as if it had been conveyed in pursuance of the judgment. The recording of any judgment as above provided, shall not prevent the court rendering such judgment from enforcing the same by any proper process, according to the course of proceedings therein.

Disobedience
of orders, how
punished.

When court
must issue
conveyance.

TITLE X.

ACTIONS IN PARTICULAR CASES.

CHAPTER I.

ACTIONS FOR FORECLOSURE OF MORTGAGES.

SECTION.

3466 Proceedings in foreclosing suits.
 3461 Surplus money to be deposited
 in court.

SECTION.

3462 Proceedings when debt secured
 falls due at different times.

Proceedings
 in foreclosure
 suits.

§ 3460. s 606. There can be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real estate or personal property, which action must be in accordance with the provisions of this Chapter. In such action the court may, by its judgment, direct a sale of the encumbered property, or so much thereof as may be necessary and the application of the proceeds of the sale to the payment of the costs of the court and that expenses of the sale, and the amount due to the plaintiff; and sales of real estate under judgments of foreclosure of mortgages and liens are subject to redemption as in case of sales under execution; and if it appear from the return of the officer making the sale that the proceeds are insufficient, and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants, personally liable for the debt, and it becomes a lien on the real estate of such judgment debtor, as in other cases, on which execution may be issued. No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the proper office, at the time of the commencement of the action, need be made a party to such action, and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding

such unrecorded conveyance, or lien as if he had been made a party to the action.

§ 3461. s 607. If there be surplus money remaining after payment of the amount due on the mortgage, lien, or incumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court. Surplus money to be deposited in court

§ 3462. s 608. If the debt for which the mortgage, lien, or incumbrance is held, is not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease, and afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper. Proceedings when debt secured fails due at different times.

CHAPTER II.

ACTION FOR NUISANCE, WASTE AND WILFUL TRESPASS IN CERTAIN CASES, ON REAL PROPERTY.

SECTION.

3463 Nuisance defined and actions for.
3464 Waste, actions for
3465 Trespass for cutting or carrying away trees, etc., actions for.

SECTION.

3466 Measure of damages in certain cases under the last sections.
3467 Damages in actions for forcible entry, etc., may be trebled.

§ 3463. s 612. Anything which is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment it lessened by the nuisance; and by the judgment Nuisance defined, and actions for.

the nuisance may be enjoined or abated, as well as damages recovered. (1)

Waste, actions
for.

§ 3464. s 613. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

Trespass for
cutting or
carrying away
trees, etc.,
actions for.

§ 3465. s 614. Any person who cuts down, or carries off, any wood or underwood, tree or timber, or girdles, or otherwise injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, village or city lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action in any court having jurisdiction.

Measure of
damages in
certain cases
under the last
sections.

§ 3466. s 615. Nothing in the last section authorizes the recovery of more than the just value of the timber taken from uncultivated wood land for the repair of a public highway or bridge upon the land, or adjoining it.

Damages in
actions for
forcible entry,
etc., may be
trebled.

§ 3467. s 616. If a person recover damages for a forcible or unlawful entry in or upon, or detention of any building or any cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

(1) See §§ 2761-2774.

CHAPTER III.

ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY, AND OTHER PROVISIONS RELATING TO ACTIONS CONCERNING REAL ESTATE.

SECTION.	SECTION.
3468 Action to determine adverse claim to real estate.	3474 A mortgage must not be deemed a conveyance, whatever its terms.
3469 When plaintiff cannot recover costs.	3475 When court may grant injunction; during foreclosure, etc.
3470 If plaintiff's title terminates pending the suit, what he may recover and how verdict and judgment to be.	3476 Damages may be recovered for injury to the possession after sale, etc.
3471 When value of improvements can be allowed as a set-off.	3477 Actions not to be prejudiced by alienation pending suit.
3472 An order may be made to allow a party to survey and measure the land in dispute.	3478 Mining claims, actions concerning to be governed by local rules.
3473 Order, what to contain and how served; when party surveying to be liable for injury done.	

§ 3468. s 620. An action may be brought by any person against another who claims an estate or interest in real property, adverse to him, for the purpose of determining such adverse claim. Action to determine adverse claim to real estate.

§ 3469. s 621. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff cannot recover costs. When plaintiff cannot recover costs.

§ 3470. s 622. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover damages for withholding the property. If plaintiff's title terminates pending the suit, what he may recover, and how verdict and judgment to be.

§ 3471. s 623. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title adversely to the claims of the plaintiff, in good faith, the value of such improvements must be allowed as a set-off against such damages. When value of improvements can be allowed as a set-off.

An order may be made to allow a party to survey and measure the land in dispute.

§ 3472. s 624. The court in which an action is pending for the recovery of real property, or for damages for an injury thereto, or a judge thereof, may, on motion, or upon notice by either party, for good cause shown, grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof, and of any tunnels, shafts or drifts thereon, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

Order, what to contain and how served. When party surveying to be liable for injury done.

§ 3473. s 625. The order must describe the property, and a copy thereof must be served on the owner or occupant, and thereupon such party may enter upon the property with necessary surveyors and assistants, and may make such survey and measurement; but if any unnecessary injury be done to the property, he is liable therefor.

A mortgage must not be deemed a conveyance, whatever its terms.

§ 3474. s 626. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

When court may grant injunction, during foreclosure, etc.

§ 3475. s 627. The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon, or after a sale on execution, before a conveyance.

Damages may be recovered for injury to the possession after sale, etc.

§ 3476. s 628. When real property has been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession, after sale and before the possession is delivered under the conveyance.

Action not to be prejudiced by alienation pending suit.

§ 3477. s 629. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

Mining claims, actions concerning to be governed by local rules.

§ 3478. s 630. In actions respecting mining claims, proof must be admitted of the customs, usages or regulations established and in force at the bar, diggings or camp embracing such claim; and such customs, usages or regulations when not in conflict with the laws of this Territory, or of the United States, must govern the decision of the action.

CHAPTER IV.

ACTIONS FOR THE PARTITION OF REAL PROPERTY.

SECTION.	SECTION.
3479 Who may bring an action for partition.	3500 Proceeds of sale, disposition of.
3480 Interest of all parties must be set forth in the complaint.	3501 When paid into court, the cases may be continued for the determination of the claims of the parties.
3481 Persons whose conveyance is not of record need not be made parties.	3502 Sale by referees must be at public auction.
3482 Plaintiff must file notice of complaint or of pendency of the action.	3503 The court must direct the terms of sale on credit.
3483 Summons must be directed to all persons interested in the property.	3504 Referees may take securities for purchase money.
3484 Unknown parties may be served by publication.	3505 Tenants whose estate has been sold, shall receive compensation.
3485 Answer of defendants, what to contain.	3506 The court may fix such compensation.
3486 The rights of all parties may be ascertained in the action.	3507 The court must protect unknown parties.
3487 Partial partition.	3508 The court must ascertain and fix the value of future contingent or vested interests.
3488 Lien-holders must be made parties or a referee appointed to ascertain their rights.	3509 Terms of sale must be made known at the time; lots must be sold separately.
3489 Lien-holders must be notified to appear before the referee appointed.	3510 Who may be purchasers.
3490 The court may order a sale or partition and appoint referees therefor.	3511 Referees must make a report of the sale to the court.
3491 Partition must be made according to the rights of the parties as determined by the court.	3512 If confirmed, conveyances may be executed.
3492 Referees must make a report of their proceedings.	3513 Proceeding if a lien-holder become a purchaser.
3493 The court may set aside or affirm report and enter judgment thereon; upon whom judgment to be conclusive.	3514 Conveyances must be recorded and will be a bar against parties.
3494 Judgment not to affect tenants for years less than ten, etc.	3515 Proceeds of sale belonging to parties unknown, how to be invested.
3495 Expenses of partition must be apportioned among the parties.	3516 Investment must be made in the name of.
3496 A lien on an undivided interest of any party is a charge only on share assigned to such party.	3517 When the interests of the parties are ascertained, securities must be taken in their names.
3497 Estate for life or years may be set off in a part of the property not sold, etc.	3518 Duties of making investments.
3498 Application of proceeds of sale of incumbered property.	3519 When unequal partition is ordered; compensation may be adjudged in certain cases.
3499 Party holding other securities may be required first to exhaust them.	3520 The share of an infant may be paid to his guardian.
	3521 The guardian of an insane person may receive the proceeds of such party's interest.
	3522 A guardian may consent to partition without action and execute releases.

SECTION.

3523 Costs of partition a lien upon the shares of the parceners.

3524 The court by consent may appoint a single referee.

3525 In actions by one of tenants in common, court may allow expenses, etc.

SECTION.

3526 Abstracts of title.

3527 Who may make abstracts.

3528 Interest to be allowed on disbursements.

Who may bring action for partition.

§ 3479. s 635. When several co-tenants hold and are in possession of real property as parceners, joint tenants or as tenants in common, in which one or more of them have an estate of inheritance, or for life, or lives, or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property, or a part thereof if it appear that a partition cannot be made without great prejudice to the owners.

Interest of all parties must be set forth in the complaint.

§ 3480. s 636. The interests of all persons in the property, whether such persons be known or unknown, must be set forth in the complaint, specifically and particularly as far as known to the plaintiff, and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff or be uncertain, or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact must be set forth in the complaint.

Persons whose conveyance is not of record need not be made parties.

§ 3481. s 637. No person having a conveyance of or claiming a lien on the property, or some part of it, need be made a party to the action unless such conveyance or lien appear of record.

Plaintiff must file notice of complaint, or of pendency of the action.

§ 3482. s 638. Immediately after filing the complaint in the district court, the plaintiff must file with the recorder of the county, or of the several counties in which the property is situated, either a copy of such complaint or notice of the pendency of the action, containing the names of the parties, so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing it shall be deemed notice to all persons.

Summons must be directed to all persons interested in the property.

§ 3483. s 639. The summons must be directed to all the joint tenants, and tenants in common, and all persons having any interest in, or any liens of record by mortgage, judgment, or otherwise, upon the property, or upon any par-

ticular portion thereof, and generally to all persons unknown who have or claim any interest in the property.

§ 3484. s 640. If a party having a share or interest is unknown, or any one of the known parties reside out of the Territory, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When publication is made, the summons, as published, must be accompanied by a brief description of the property which is the subject of the action.

Unknown parties may be served by publication.

§ 3485. s 641. The defendants who have been personally served with the summons, and a certified copy of the complaint, or who have appeared without such service, must set forth in their answers, fully and particularly, the origin, the nature, and the extent of their respective interests in the property, and if such defendants claim a lien on the property by mortgage, judgment or otherwise, they must state the original amount and date of the same, and the sum remaining due thereon, also whether the same has been secured in any other way or not, and if secured, the extent and nature of such security, or they are deemed to have waived their rights to such lien.

Answer of defendants, what to contain.

§ 3486. s 642. The rights of the several parties, plaintiff as well as defendant, may be put in issue, tried and determined by such action; and when a sale of the premises is necessary, the title must be ascertained by proof, to the satisfaction of the court, before the judgment of sale can be made, and where service of the complaint has been made by publication, like proofs must be required of the right of the absent or unknown parties, before such judgment is rendered; except that where there are several unknown persons having an interest in the property, their rights may be considered together in the action, and not as between themselves.

The rights of all parties may be ascertained in the action.

§ 3487. s 643. Whenever from any cause it is in the opinion of the court, impracticable, or highly inconvenient to make a complete partition, in the first instance, among all the parties in interest, the court may first ascertain and determine the shares or interests respectively held by the original co-tenants, and thereupon adjudge and cause a partition to be made, as if such original co-tenants were the parties, and sole parties in interest, and the only parties to the action, and thereafter may proceed in like manner to adjudge and

Partial partition.

make partition, separately of each share or portion so ascertained and allotted, as between those claiming under the original tenant to whom the same shall have been so set apart, or may allow them to remain tenants in common thereof as they may desire.

Lien holders must be made parties, or a referee appointed to ascertain their rights.

§ 3488. s 644. If it appears to the court by the certificate of the county recorder, or clerk, or by the sworn or verified statement of any person who may have examined or searched the records, that there are outstanding liens, or incumbrances of record upon such real property, or any part or portion thereof, which existed and were of record at the time of the commencement of the action, and the persons holding such liens are not made parties to the action, the court must either order such persons to be made parties to the action by an amendment or supplemental complaint, or appoint a referee to ascertain whether or not such liens or incumbrances have been paid, or if not paid, what amount remains due thereon, and their order among the liens or incumbrances severally held by such persons and the parties to said action, and whether the amount remaining due thereon has been secured in any manner: if secured, the nature and extent of the security.

Lien-holders must be notified to appear before the referee appointed.

§ 3489. s 645. The plaintiff must cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in the last section, on each person having outstanding liens of record who is not a party to the action, to appear before the referee at a specified time and place to make proof, by his own affidavit, or otherwise, of the amount due or to become due, contingently or absolutely, thereon. In case such person be absent, or his residence be unknown, service may be made by publication or notice to his agents, under the direction of the court, in such manner as may be proper. The report of the referee thereon must be made to the court, and must be confirmed, modified, or set aside, and a new reference ordered, as the justice of the case may require.

The court may order a sale or partition and appoint referees therefor.

§ 3490. s 646. If it be alleged in the complaint, and established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that the partition cannot be made without great prejudice to the owners, the court may order a sale thereof; otherwise, upon

the requisite proofs being made, it must order a partition according to the respective rights of the parties, as ascertained by the court, and appoint three referees therefor; and must designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

§ 3491. s 647. In making the partition, the referees must divide the property and allot the several portions thereof to the respective parties; quality and quantity relatively considered, according to the respective rights of the parties, as determined by the court, pursuant to the provisions of this Chapter, designating the several portions by proper landmarks, and may employ a surveyor, with the necessary assistants to aid them.

Partition must be made according to the rights of the parties as determined by the court.

§ 3492. s 648. The referees must make a report of their proceedings, specifying therein the manner in which they executed their trust and describing the property divided and the shares allotted to each party, with a particular description of each share.

Referee must make a report of their proceedings.

§ 3493. s 649. The court may confirm, change, modify or set aside the report, and, if necessary, appoint new referees. Upon the report being confirmed, judgment must be rendered that such partition be effectual forever, which judgment is binding and conclusive.

The court may set aside or affirm report, and enter judgment thereon.

1. On all persons named as parties to the action, and their legal representatives who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder, or the inheritance of such property, or of any part thereof, after the determination of a particular estate therein, and who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life.

Upon whom judgment to be conclusive.

2. On all persons interested in the property who may be unknown, to whom notice has been given of the action for partition by publication; and,

3. On all other persons claiming from such parties or persons, or either of them. And no judgment is invalidated by reason of the death of any party before final judgment or decree; but such judgment or decree is as conclusive against the heirs, legal representatives, or assigns of such decedent, as if it had been entered before his death.

Judgment not to affect tenants for years less than ten, etc.

§ 3494. s 650. The judgment does not affect tenants for years, less than ten, to the whole of the property which is the subject of the partition.

Expenses of partition must be apportioned among the parties.

§ 3495. s 651. The expenses of the referees, including those of the surveyor and his assistants, when employed, must be ascertained and allowed by the court, and the amount thereof together with the fees allowed by the court in its discretion to the referees, must be apportioned among the different parties to the action equitably.

A lien on an undivided interest of any party is a charge only on share assigned to such party.

§ 3496. s 652. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall henceforth be a charge only on the share assigned to such party, but such share must be first charged with its just proportion of the costs of the partition, in preference to such lien.

Estate for life or years may be set off in a part of the property not sold, etc.

§ 3497. s 653. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

Application of proceeds of sale of encumbered property.

§ 3498. s 654. The proceeds of the sale of the encumbered property must be applied under the direction of the court, as follows:

1. To pay its just proportion of the general costs of the action.
2. To pay the costs of the reference.
3. To satisfy and cancel of record the several liens to their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment.
4. The residue among the owners of the property sold, according to their respective shares therein.

Party holding other securities may be required first to exhaust them.

§ 3499. s 655. Whenever any party to an action who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just reduction to be made from the amount of the lien on the property on account thereof.

Proceeds of sale disposed of.

§ 3500. s 656. The proceeds of sale, and the securities taken by the referees, or any part thereof, must be distributed by them to the persons entitled thereto, whenever the

court so directs. But in case no direction be given, all of such proceeds and securities must be paid into court, or deposited therein, or as directed by the court.

§ 3501. s 657. When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties, for the determination of their respective claims thereto, which must be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings as in an original action.

When paid into court the cause may be continued for the determination of the claims of the parties.

§ 3502. s 658. All sales of real property, made by referees under this Chapter, must be made at public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice must state the terms of sale, and if the property, or any part of it, is to be sold subject to a prior estate, charge or lien, that must be stated in the notice.

Sale by referees must be at public auction.

§ 3503. s 659. The court must in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required by the provisions hereinafter contained, to be invested for the benefit of unknown owners, minors, or parties out of the Territory.

The court must direct the terms of sale on credit.

§ 3504. s 660. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money, of such parts of the property as are directed by the court to be sold on credit, for the shares of any known owner of full age, in the name of such owner and for the shares of a minor in the name of the guardian of such minor, and for other shares, in the name of the clerk of the court, and his successors in office.

Referees may take securities for purchase money.

§ 3505. s 661. The person entitled to a tenancy for life or years, whose estate has been sold, is entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof, by an instrument in writing, filed with the clerk of the court. Upon the filing of such con-

Tenants whose estate has been sold shall receive compensation.

sent, the clerk must enter the same in the minutes of the court.

The court may fix such compensation.

§ 3506. s 662. If such consent be not given, filed and entered, as provided in the last section, at or before a judgment of sale is rendered, the court must ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and must order the same to be paid to such party, or deposited in the court for him, as the case may require.

The court must protect parties unknown.

§ 3507. s 663. If the person entitled to such estate for life or years be unknown, the court must provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

The court must ascertain and secure the value of future contingent or vested interests.

§ 3508. s 664. In all cases of sales, when it appears that any person has a vested or contingent future right or estate in any of the property sold, the court must ascertain and settle the proportional value of such contingent or vested right or estate, and must direct such proportion of the proceeds of the sale to be invested, secured or paid over, in such manner as to protect the rights and interests of the parties.

Terms of sale must be made known at the time. Lots must be sold separately.

§ 3509. s 665. In all cases of sales of property, the terms must be made known at the time, and if the premises consist of distinct farms or lots, they must be sold separately.

Who may not be purchasers.

§ 3510. s 666. Neither of the referees, nor any person for the benefit of either of them, can be interested in any purchase; nor can a guardian of a minor party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the minor. All sales contrary to the provisions of this section are void.

Referees must make a report of the sale to the court.

§ 3511. s 667. After completing a sale of the property, or any part thereof ordered to be sold, the referee must report the same to the court, with a description of the different parcels of land sold to each purchaser; the name of the purchaser; the price paid or secured; the terms and conditions of the sale; and the securities, if any, taken. The report must be filed in the office of the clerk of the court.

If confirmed, conveyances may be executed.

§ 3512. s 668. If the sale be confirmed by the court, an order must be entered, directing the referees to execute conveyances and take such securities pursuant to such sale;

which they are hereby authorized to do. Such order may also give direction to them respecting the disposition of the proceeds of the sale.

§ 3513. s 669. When a party is entitled to a share of the property, or an incumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Proceeding if a lien holder becomes a purchaser.

§ 3514. s 670. The conveyances must be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way, who shall have been named as parties in the action, and against all such parties or persons as were unknown, if the summons was served by publication, and against all persons claiming under them, or either of them, and against all persons having unrecorded deeds or liens at the commencement of the action.

Conveyances must be recorded and will be a bar against parties.

§ 3515. s 671. When there are proceeds of a sale belonging to an unknown owner, or to a person without the Territory, who has no legal representative within it, the same must be invested in securities at interest for the benefit of the persons entitled thereto.

Proceeds of sale belonging to parties unknown, how to be invested.

§ 3516. s 672. When the security of the proceeds of sale is taken, or when an investment of any such proceeds is made, it must be done, except as herein otherwise provided, in the name of the recorder of the county where the papers are filed, and his successors in office; who must hold the same for the use and benefit of the parties interested, subject to the order of the court.

Investment must be made in the name of.

§ 3517. s 673. When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing under their hands delivered to the referees, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities must be taken in the names of, and payable to, the parties respectively entitled thereto and must be delivered to such parties upon their receipt therefor. Such agreement and receipt must be returned and filed with the clerk.

When the interests of the parties are ascertained securities must be taken in their names.

§ 3518. s 674. The recorder in whose name a security is taken, or by whom an investment is made, and his successors in office, must receive the interest and principal as it becomes due, and apply and invest the same as the court may

Duties of making investments.

direct, and must deposit with the county treasurer all securities taken, and keep an account in a book provided and kept for that purpose, in the recorder's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

When unequal partition is ordered.

§ 3519. s 675. When it appears that partition cannot be made equally between the parties according to their respective rights, without prejudice to the rights and interest of some of them, and a partition be ordered, the court may adjudge compensation to be made by one party to another, on account of the inequality: but such compensation shall not be required to be made to others by owners unknown, nor by a minor, unless it appears that such minor has personal property sufficient for that purpose, and that his interest will be promoted thereby. And in all cases the court has power to make compensatory adjustment between the respective parties, according to the ordinary principles of equity.

Compensation may be set off in certain cases.

The share of an infant may be paid to his guardian.

§ 3520. s 676. When the share of a minor is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian, or the special guardian appointed for him in the action, upon giving the security required by law or directed by order of the court.

The guardian of an insane person may receive the proceeds of such party's interest.

§ 3521. s 677. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property has been sold, may receive, in behalf of such person, his share of the proceeds of such real property, from the referees, on executing with sufficient sureties an undertaking approved by the judge of the court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative.

A guardian may consent to partition without action, and execute releases.

§ 3522. s 678. The general guardian of a minor, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy, or in common, or in any other manner so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree upon the share to be set off to such minor, or other person entitled, and may execute a release in his behalf to the

owners of the shares of the parts to which they may be respectively entitled, upon an order of the court.

§ 3523. s 679. The costs of partition, including reasonable counsel fees, expended by the plaintiff or either of the defendants, for the common benefit, fees of referees and other disbursements, must be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When however, litigation arises between some of the parties only, the court may require the expenses of such litigation to be paid by the parties thereto, or any of them.

Costs of partition a lien upon the shares of the partners.

§ 3524. s 680. The court with the consent of the parties, may appoint a single referee, instead of three referees, in the proceedings under the provisions of this Chapter, and the single referee, when thus appointed, has all the powers and may perform all the duties required of the three referees.

The court by consent may appoint a single referee.

§ 3525. s 681. If it appear that other actions or proceedings have been necessarily prosecuted or defended by any one of the tenants in common, for the protection, confirmation, or perfecting of the title, or setting the boundaries, or making a survey or surveys of the estate partitioned, the court shall allow to the parties of the action who have paid the expenses of such litigation or other proceedings, all the expenses necessarily incurred therein, including counsel fees, which shall have accrued to the common benefit of the other tenants in common, with interest thereon from the date of making the said expenditures, and the same must be pleaded and allowed by the court and included in the final judgment, and shall be a lien upon the share of each tenant respectively, in proportion to his interest, and shall be enforced in the same manner as taxable costs of partition are taxed and collected.

In actions by one of tenants in common, court may allow expenses, etc.

§ 3526. s 682. If it appear to the court that it was necessary to have made an abstract of the title to the property to be partitioned, and such abstract shall have been procured by the plaintiff, or if the plaintiff shall have failed to have the same made before the commencement of the action, and any one of the defendants shall have had such abstract after-

Abstract of title.

ward made, the cost of the abstract with interest thereon from the time the same is subject to the inspection of the respective parties to the action, must be allowed and taxed. Whenever such abstract is procured by the plaintiff before the commencement of the action, he must file with his complaint a notice that an abstract of the title has been made, and is subject to the inspection and use of all the parties to the action, designating therein where the abstract will be kept for inspection. But if the plaintiff shall have failed to procure such abstract before commencing the action, and any defendant shall procure the same to be made, he shall, as soon as he has directed it to be made, file a notice thereof in the action with the clerk of the court, stating who is making the same and where it will be kept when finished. The court, or the judge thereof, may direct, from time to time, during the progress of the action, who shall have the custody of the abstract.

Who may
make abstract.

§ 3527. s 683. The abstract mentioned in the last preceding section may be made by any competent searcher of records, and need not be certified by the recorder or other officer, but instead thereof, it must be verified by the affidavit of the person making it, to the effect that he believes it to be correct: but the same may be corrected, from time to time, if found incorrect under the directions of the court.

Interest to be
allowed on dis-
bursements.

§ 3528. s 684. Whenever, during the progress of the action for partition, any disbursement shall have been made, under the direction of the court, or the judge thereof, by a party thereto, interest must be allowed thereon from the time of making such disbursement.

CHAPTER V.

ACTION FOR THE USURPATION OF AN OFFICE OR FRANCHISE.

SECTION.	SECTION.
3529 Actions may be brought against any party usurping, etc., any office or franchise.	3533 Damages may be recovered by successful applicant.
3530 Name of person entitled to office may be set forth in the complaint.	3534 When several persons claim the same office, etc.
3531 Judgment may determine the rights of both incumbent and claimant.	3535 If defendant found guilty, what judgment to be rendered against him.
3532 When rendered in favor of applicant.	3536 Undertakings, when required in actions for usurpation.

§ 3529. s 691. An action may be brought in the name of the people of this Territory against any person who usurps, intrudes into, holds or exercises any office or franchise, real or pretended, within this Territory, without authority of law. Such action shall be brought by the prosecuting attorney of the proper county, when the office or franchise relates to a county, precinct or city, and when such office or franchise relates to the Territory, by the United States district attorney; and it shall be the duty of the proper officer, upon proper showing, to bring such action whenever he has reason to believe that any such office or franchise has been usurped, intruded into, held or exercised without authority of law. Any person rightfully entitled to an office or franchise may bring an action in his own name against the person who has usurped, intruded into, or who holds or exercises the same.

§ 3530. s 692. Whenever such action is brought in the name of the people of the Territory, the prosecuting officer at the request of the person entitled to the office or franchise, in addition to the cause of action in behalf of the people of the Territory, may set forth the name of the person so entitled, with a statement of his right thereto, and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of usurpation thereof, an order may be granted by the judge, or court wherein the case is pending, for the arrest of such defendant, and holding him to bail; and thereupon he may

Actions may be brought against any party usurping, etc., any office or franchise.

Name of person entitled to office may be set forth in the complaint.

be arrested and held to bail, in the same manner and with the same effect, and subject to the same rights, and liabilities, as in other civil actions where the defendant is subject to arrest.

Judgment may determine the rights of both incumbent and claimant.

§ 3531. s 693. In every such case judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as the form of the action and justice may require.

When rendered in favor of applicant.

§ 3532. s 694. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office.

Damages may be recovered by successful applicant.

§ 3533. s 695. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover, by action, the damages which he may have sustained by reason of the usurpation of the office by the defendant.

When several persons claim the same office, etc.

§ 3534. s 696. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

If defendant found guilty, what judgment to be rendered against him.

§ 3535. s 697. When a defendant, against whom such action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding any office, franchise or privilege, judgment must be rendered that such defendant be excluded from the office, franchise or privilege, and that he pay costs of the action. The court may also, in its discretion, in actions to which the people of the Territory are a party, impose upon the defendant a fine not exceeding five thousand dollars, which fine, when collected must be paid into the treasury of the Territory.

Undertaking when required in actions for usurpation.

§ 3536. s 698. When the action is brought upon the information or application of a private party, the prosecuting officer may require such party to enter into an undertaking, with sureties to be approved by the said officer, conditioned that such party or the sureties will pay any judgment for costs or damages recovered against the plaintiff, and all the costs and expenses incurred in the prosecution of the action.

TITLE XI.

OF PROCEEDINGS IN JUSTICES' COURTS.

CHAPTER I.

PLACE OF TRIAL OF ACTIONS IN JUSTICES' COURTS.

SECTION.

SECTION.

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| 3537 | Actions, when may be commenced. | 3541 | Proceedings after order changing place of trial. |
| 3538 | Place of trial may be changed in certain cases. | 3542 | Effect of order changing place of trial. |
| 3539 | Limitations on the right to change. | 3543 | Transfer of cases to the district court. |
| 3540 | To what court transferred. | | |

§ 3537. s 701. Actions in justices' courts must be commenced subject to the right to change the place of trial, as in this Chapter provided, and must be tried: Actions, when may be commenced.

1. If there is no justice's court for the precinct or city in which the defendant resides, in any city or precinct of the county in which he resides.

2. When two or more persons are jointly, or jointly and severally bound in any debt or contract, or otherwise jointly liable in the same action, and reside in different precincts or different cities of the same county, or in different counties; in the precinct or city in which any of the persons liable may reside.

3. In cases of injury to the person or property, in the precinct or city where the injury was committed or where the defendant resides.

4. If for the recovery of personal property, or the value thereof, or damages for taking or detaining the same, in the precinct or city in which the property may be found, or in which the property was taken, or in which the defendants reside.

5. When the defendant is a non-resident of the county, in any precinct or city wherein he may be found.

6. When the defendant is a non-resident of the Territory, in any precinct or city in the Territory.

7. When a person has contracted to perform an obligation at a particular place and resides in another county, precinct or city, in the precinct or city in which such obligation is to be performed, or in which he resides.

8. When the parties voluntarily appear and plead without summons, in any precinct or city in the Territory.

9. In all other cases: In the precinct or city in which the defendant resides.

Place of trial
may be
changed in
certain cases.

§ 3538. s 702. The court may at any time before the trial, on motion, change the place of trial in the following cases.

1. When it appears to the satisfaction of the justice before whom the action is pending, by affidavit of either party, that such justice is a material witness for either party.

2. When either party makes and files an affidavit that he believes that he cannot have a fair and impartial trial before such justice, by reason of the interest, prejudice, or bias of the justice.

3. When from any cause the justice is disqualified from acting.

4. When the justice is sick or unable to act.

Limitation on
the right to
change.

§ 3539. s 703. The place of trial cannot be changed on motion of the same party more than once, upon any or all the grounds specified in the first and second subdivisions of the preceding sections.

To what court
transferred.

§ 3540. s 704. When the court orders the place of trial to be changed, the action must be transferred for trial to a court the parties may agree upon, and if they do not so agree, then to another justice's court in the same county.

Proceedings
after order
changing
place of trial.

§ 3541. s 705. After an order has been made, transferring the action for trial to another court, the following proceedings must be had:

1. The justice ordering the transfer, must immediately transmit to the justice of the court to which it is transferred, on payment by the party applying, of all costs that have accrued, all the papers in the action, together with a certified transcript from his docket, of the proceedings therein.

2. Upon the receipt by him of such papers, the justice of the court to which the case is transferred, must issue a notice, stating when and where the trial will take place,

which notice must be served upon the parties at least one day before the time fixed for trial.

§ 3542. s 706. From the time of the order changing the place of trial is made, the court to which the action is thereby transferred, has the same jurisdiction over it as though it had been commenced in such court. Effect of order changing place of trial.

§ 3543. s 707. The parties to an action in a justice's court, cannot give evidence upon any questions which involve the title or possession of real property or which involve the legality of any tax, impost, toll, or municipal fine, nor can any issue presenting such question be tried by such court, and if it appear from the answer of the defendant, verified by his oath or that of his agent or attorney, that the determination of the action will necessarily involve the question of title or possession to real property, or involve the legality of any tax, impost, toll, or municipal fine, the justice must suspend all further proceedings in the action, and certify the pleadings, and if any of the pleadings are oral, a transcript of the same, from his docket to the clerk of the district court of the district in which said justice's precinct is situated, and from the time of filing such pleadings or transcript with the clerk, the district court has over the action the same jurisdiction as if it had been commenced therein; *Provided*, That in cases of forcible entry and detainer, of which justices' courts have jurisdiction, any evidence otherwise competent, may be given, and any question properly involved therein, may be determined. Transfer of cases to the district court. March 11, 1888.

CHAPTER II.

MANNER OF COMMENCING ACTIONS IN JUSTICES' COURTS.

SECTION.	SECTION.
3544 Actions, how commenced.	3550 Time for appearance of defendant.
3545 Summons may issue within a year.	3551 Alias summons.
3546 Defendant may waive summons.	3552 Same.
3547 Parties may appear in person or by attorney.	3553 Summons, limitations on service of.
3548 When guardian necessary, how appointed.	3554 Summons, by whom and how served.
3549 Summons, how issued, directed and what to contain.	3555 When justice may fix day for trial; hours of appearance.

Actions, how commenced.

§ 3544. s 712. An action in a justice's court is commenced by filing a complaint.

Summons may issue within a year.

§ 3545. s 713. The court must indorse on the complaint the date upon which it was filed, and at any time within one year thereafter, the plaintiff may have summons issued.

Defendant may waive summons.

§ 3546. s 714. At any time after the complaint is filed, the defendant may, in writing, or by appearing and pleading, waive the issuing of summons.

Parties may appear in person or by attorney.

§ 3547. s 715. Parties in justices' court may appear and act in person, or by attorney, and any person except the officer by whom the summons or jury process was served, may act as attorney.

When guardian necessary, how appointed

§ 3548. s 716. When a minor, insane, or incompetent person is a party, he must appear either by his general guardian, if he have one, or by a guardian *ad litem* appointed by the justice. When a guardian *ad litem* is appointed by the justice, he must be appointed as follows:

1. If the minor, insane, or incompetent person be plaintiff, the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years; if under that age, or if insane, or incompetent, upon the application of a relative or friend.

2. If the minor, insane, or incompetent person be defendant, the appointment must be made at the time the summons is returned, or before the answer, upon the application of the minor if he be of the age of fourteen years, and ap-

ply at the time or before the summons is returned. If he be under the age of fourteen, or be insane or incompetent, or neglect so to apply, then upon the application of a relative or friend or any other party to the action, or by the justice on his own motion.

§ 3549. s 717. The summons must be directed to the defendant, and signed by the justice, and must contain:

Summons, how issued, directed, and what to contain.

1. The title of the court, name of the county and the city or precinct in which the action is commenced, and the names of the parties thereto.

2. A sufficient statement of the cause of action, in general terms, to apprise the defendant of the nature of the claim against him.

3. A direction that the defendant appear and answer before the justice, at his office, as specified in section 718 of this Code.

4. In an action arising on a contract for the recovery of money or damages only, a notice, that unless the defendant so appear and answer, the plaintiff will take judgment for the sum claimed by him (stating it).

5. In other actions, a notice that unless the defendant so appear and answer, the plaintiff will apply to the court for the relief demanded. If the plaintiff has appeared by attorney, the name of the attorney must be indorsed upon the summons.

§ 3550. s 718. The time specified in the summons for the appearance of the defendant must be as follows:

Time for appearance of defendant.

1. If an order of arrest is indorsed upon the summons forthwith.

2. In all other cases the summons must contain a direction that the defendant must appear and answer the complaint within five days after the service of summons, if the summons is served in the city or precinct in which the action is brought, within ten days if served out of the precinct or city, but in the county in which the action is brought; and within twenty days if served elsewhere.

Time for appearance of defendant.
March 11, 1896.

§ 3551. s 719. If the summons is returned without being served upon any or all of the defendants, the justice, upon the demand of the plaintiff, may issue an alias summons in the same form as the original, except that he may fix the time for the appearance of the defendant at a period not to exceed ninety days from its date.

Alias summons.

Same. § 3552. s 720. The justice may, within a year from the date of the filing of the complaint, issue as many alias summonses as may be demanded by the plaintiff.

Summons, limitations on service of. § 3553. s 721. The summons cannot be served out of the county in which the action is commenced, except, when the action is brought upon a joint contract or obligation of two or more persons, who reside in different counties, and the summons has been served upon the defendant, resident of the county, in which case the summons may be served upon the other defendant out of the county; and except, also, when an action is brought against a party who has contracted to perform an obligation at a particular place, and resides in a different county, in which case summons may be served in the county where he resides; and except, also, where an action is brought for injury to person or property, and the defendant resides in a different county; in which case summons may be served in the county where the defendant resides.

March 11, 1886. § 3554. s 722. The summons may be served by any sheriff or constable of the county, or marshal of the city in which the service is made; or by any male resident, over the age of twenty-one years, not a party to the suit, within the county wherein the action is brought, and must be served and returned as provided in actions commenced in the district court, except that a copy of the complaint need not be served with the summons; or it may be served by publication, and the sections of this Code providing for the publication of summons issued out of the district court are applicable to the justices' court, the necessary changes and substitutions being made therein. When the summons is served by the sheriff or constable or marshal of the city, it must be returned with his certificate of service; but when by a private citizen, by his affidavit of service.

When justice may fix day for trial § 3555. s 723. When all the parties served with process shall have appeared, or some of them have appeared, and the remaining defendants have made default, the justice must fix a day for the trial of said cause and notify the plaintiff and the defendants who have appeared, thereof. The parties are entitled to one hour in which to appear after the time fixed by the justice, but are not bound to remain longer than that time—unless both parties have appeared, and the justice being present is engaged in the trial of another cause.

Hours of appearance.
March 11, 1886.

CHAPTER III.

PLEADINGS IN JUSTICES' COURTS.

SECTION.

3556 Form of pleading.

3557 Pleadings.

3558 Complaint defined.

3559 When may demur.

3560 Answer.

3561 If the defendant omits to set up counter claim.

SECTION.

3562 When plaintiff may demur to answer.

3563 Proceedings on demurrer.

3564 Amendment of pleadings.

3565 Answer to demurrer to amend pleadings.

§ 3556. s 728. Pleadings in a justice's court:

Form of pleading.

1. Are not required to be in a particular form; but must be such as to enable a person of common understanding to know what is intended.

2. May, except the complaint, be oral or in writing.

3. Need not be verified unless otherwise provided in this Code.

4. If in writing, must be filed with the justice.

5. If oral, an entry of their substance must be made in the docket.

§ 3557. s 729. The pleadings are:

Pleadings.

1. The complaint of the plaintiff.

2. The demurrer to the complaint.

3. The answer by the defendant.

4. The demurrer to the answer.

§ 3558. s 730. The complaint in justices' courts is a concise statement in writing of the facts constituting the plaintiff's cause of action; or the original account, note, bill, bond, or instrument, or a copy thereof, upon which the action is based, which shall be deemed a complaint.

Complaint defined.
March 11, 1886.

§ 3559. s 731. The defendant may at any time before answering, demur to the complaint.

When may demur.

§ 3560. s 732. The answer may contain a denial of any or all of the material facts stated in the complaint, which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defense or counter claim, upon which an action might be brought by the defendant against the plaintiff in a justice's court.

Answer

If the defendant omits to set up counter claim.

§ 3561. s 733. If the defendant omit to set up a counter claim in the cases mentioned in the last section, neither he nor his assignee can afterwards maintain an action against the plaintiff therefor.

When plaintiff may demur to answer.

§ 3562. s 734. When the answer contains new matter in avoidance, or constituting a defense or a counter claim, the plaintiff may, at any time before trial, demur to the same for insufficiency, stating therein the grounds of such demurrer.

Proceedings on demurrer.

§ 3563. s 735. The proceedings on demurrer are as follows:

1. If the demurrer to the complaint is sustained, the plaintiff may, within such time, not exceeding two days, as the court allows, amend his complaint.

2. If the demurrer to a complaint is overruled, the defendant may answer forthwith.

3. If the demurrer to an answer is sustained, the defendant may amend his answer within such time, not exceeding two days, as the court may allow.

4. If the demurrer to an answer is overruled, the action must proceed as if no demurrer had been interposed.

Amendment of pleadings.

§ 3564. s 736. Either may, at any time before the conclusion of the trial, amend any pleading, but if the amendment is made after the issue, and it appear to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment must be granted. The court may also, in its discretion, when an adjournment will by the amendment be rendered necessary, require, as a condition to the allowance of such amendment, made after issue joined, the payment of costs to the adverse party, to be fixed by the court, not exceeding twenty dollars. The court may also, on such terms as may be just, and on payment of costs, relieve a party from a judgment by default taken against him by his mistake, inadvertence, surprise, or excusable neglect, but the application for such relief must be made within ten days after the entry of the judgment and upon an affidavit showing good cause therefor.

Answer or demurrer to amended pleadings.

§ 3565. s 737. When the pleading is amended, the adverse party may answer or demur to it within such time, not exceeding two days, as the court may allow.

CHAPTER IV.

PROVISIONAL REMEDIES IN JUSTICES' COURTS.

SECTION.

3566 Order of arrest and arrest of defendant.

3567 Order executed in any part of the Territory.

3568 Affidavit and undertaking for order of arrest.

3569 A defendant arrested must be taken before the court immediately.

3570 The officer must give notice to the plaintiff of arrest.

SECTION.

3571 The officer must detain the defendant.

3572 Writ of attachments shall issue upon affidavit.

3573 Undertaking on attachment must be required.

3574 Writ of attachment, substance of; officer may take an undertaking instead of levying.

3575 Certain provisions of Code apply to.

3576 How claim and delivery enforced

§ 3566. s 742. An order to arrest the defendant may be indorsed on a summons issued by a justice, and the defendant may be arrested thereon by the sheriff, constable, or city marshal, at the time of serving the summons, and brought before the justice, and detained until duly discharged, in the following cases:

Order of arrest, and arrest of defendant

1. In an action for the recovery of money or damages, on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the Territory, with intent to defraud his creditors.

2. In an action for a fine or penalty, or for money or property embezzled or fraudulently misapplied, or converted to his own use by one who received it in a fiduciary capacity.

3. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought.

4. When the defendant has removed, concealed or disposed of his property, or is about to do so, with intent to defraud his creditors. But no female can be arrested in any civil action.

§ 3567. s 743. In cases under the first subdivision of the preceding section, or when the defendant is about to depart from the Territory, the order of arrest may be executed, and the defendant arrested in any county in the Territory.

Order executed in any part of the Territory

Affidavit and undertaking for order of arrest.

§ 3568. s 744. Before an order for an arrest can be made, the party applying must prove to the satisfaction of the justice, by the affidavit of himself or some other person, the facts upon which the application is founded. The plaintiff must also execute and deliver to the justice a written undertaking in the sum of three hundred dollars, with sufficient sureties, to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful, or without sufficient cause, not exceeding the sum specified in the undertaking.

A defendant arrested must be taken before the court immediately.

§ 3569. s 745. The defendant, immediately upon being arrested, must be taken to the office of the justice who made the order, and if he be absent or unable to try the action, or if it be made to appear to him, by the affidavit of the defendant, that he is a material witness in the action, the officer must immediately take the defendant before a justice of that or an adjoining precinct of the county, who must take jurisdiction of the action, and proceed thereon as if the summons had been issued and the order of arrest made by him.

The officer must give notice to the plaintiff of arrest.

§ 3570. s 746. The officer making the arrest must immediately give notice thereof to the plaintiff, or his attorney or agent, and indorse on the summons, and subscribe a certificate, stating the time of serving the same, the time of the arrest and of his giving notice to the plaintiff.

The officer must detain the defendant.

§ 3571. s 747. The officer making the arrest must keep the defendant in custody until duly discharged by order of the justice.

Writ of attachments shall issue upon affidavit.

§ 3572. s 748. A writ to attach the property of the defendant must be issued by the justice at the time of, or after issuing summons and before answer, on receiving an affidavit by or in behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit for attachment out of the district court.

Undertaking on attachment must be required.

§ 3573. s 749. Before issuing the writ the justice must require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, in a sum not less than fifty nor more than three hundred dollars, to the effect that if the defendant receives judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages

which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

§ 3574. s 750. The writ may be directed to the sheriff or any constable of the county, or the sheriff of any other county, and must require him to attach and safely keep all the property of the defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant give him security, by the undertaking of two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs; in which case, to take such undertaking.

Writ of attachment, substituted.
Officer may take an undertaking instead of levying.

§ 3575. s 751. The sections of this Code providing for attachments out of the district courts except as in this Chapter expressly provided, are applicable to attachments issued out of justices' courts; the necessary changes and substitutions being made therein.

Certain provisions of Code apply to.

§ 3576. s 752. In an action to recover possession of personal property, the plaintiff may, at the time of issuing summons, or at any time thereafter before answer, claim the delivery of such property to him; and the sections of this Code providing the practice in proceedings for claim and delivery of personal property in the district court, are applicable to like proceedings in justice's courts, the necessary changes and substitutions being made therein.

How claim and delivery enforced.

CHAPTER V.

DEFAULTS, POSTPONEMENTS, TRIALS AND JUDGMENTS IN JUSTICES' COURTS.

SECTION.	SECTION.
3577 Judgment when defendant fails to appear.	3592 Manner of pleading a written instrument.
3578 Judgment against defendant on demurrer.	3593 If a copy of an instrument be filed, the signature deemed admitted.
3579 Time when trial must commence.	3594 Judgment by confession.
3580 When court may of its own motion postpone trial.	3595 Judgment by dismissal.
3581 Postponement by consent.	3596 Judgment upon verdict.
3582 Postponement upon application of a party.	3597 Judgment after trial by the court.
3583 No continuation for more than ten days to be granted unless upon filing of undertaking.	3598 Judgment, how entered when plaintiff subject to arrest.
3584 Issue defined and the different kinds.	3599 If the sum found due exceeds the jurisdiction, etc.
3585 Issue of law, how raised.	3600 Offer to compromise before trial.
3586 Issue of fact, how raised.	3601 Costs must be included in the judgment.
3587 Issue of law, how tried.	3602 Abstract of judgment.
3588 Issue of fact, how tried.	3603 Abstract may be filed and docketed in clerk's office.
3589 Jury, how waived.	3604 Effect of docketing.
3590 Either party failing to appear.	3605 Judgment not a lien unless abstract is docketed.
3591 Challenges to jurors.	

Judgment
when defend-
ant fails to ap-
pear.

March 11, 1886.

§ 3577. s 757. When the defendant fails to appear and answer or demur within the time specified in the summons, or when he fails to appear within one hour after the time specified in the notice, the justice must, upon application of the plaintiff, enter the default of the defendant and hear the evidence offered by the plaintiff, and render judgment in his favor for such sum (not exceeding the amount specified in the summons) as appears by such evidence to be just.

Judgment
against
defendant on
demurrer.

§ 3578. s 758. In the following cases the same proceedings must be had, and judgment must be rendered in like manner, as if the defendant had failed to appear and answer or demur:

1. If the complaint has been amended, and the defendant fails to answer it as amended, within the time allowed by the court.

2. If the demurrer to the complaint is overruled, and the defendant fails to answer at once.

3. If the demurrer to the answer is sustained, and the defendant fails to amend the answer within the time allowed by the court.

§ 3579. s 759. Unless postponed as provided in this Chapter, or unless transferred to another court, the trial of the action must commence within one hour after the time fixed by the justice for the trial.

Time when trial must be commenced.
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§ 3580. s 760. The court may, of its own motion, postpone the trial:

When court may of its own motion postpone trial.

1. For not exceeding one day, if, at the time fixed by law or by an order of the court for the trial, the court is engaged in the trial of another action.

2. For not exceeding two days, if, by an amendment of the pleadings, or the allowance of time to make such amendment or to plead, a postponement is rendered necessary.

3. For not exceeding three days, if the trial is upon issues of fact, and a jury has been demanded.

§ 3581. s 761. The court may, by consent of the parties, given in writing or in open court, postpone the trial to a time agreed upon by the parties.

Postponement by consent.

§ 3582. s 762. The trial may be postponed upon the application of either party, for a period not exceeding four months:

Postponement upon application of a party.

1. The party making the application must prove, by his own oath or otherwise, that he cannot, for want of material testimony, which he expects to procure, safely proceed to trial, and must show in what respect the testimony expected is material, and that he has used due diligence to procure it, and has been unable to do so.

2. If the application is on the part of the plaintiff, and the defendant is under arrest, a postponement for more than three hours discharges the defendant from custody; but the action may proceed notwithstanding, and the defendant is subject to arrest on execution, in the same manner as if he had not been discharged.

3. If the application is on the part of a defendant under arrest, before it can be granted he must execute an undertaking, with two or more sufficient sureties, to be approved by, and in a sum to be fixed by the justice, to the effect that he will render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that the sureties will pay

to the plaintiff the amount of any judgment which he may recover in the action, not exceeding the amount specified in the undertaking. On filing the undertaking specified in this subdivision, the justice must order the defendant to be discharged from custody.

4. The party making the application must, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance may be then taken by deposition before the justice, and that the testimony so taken may be read on the trial, with the same effect, and subject to the same objections, as if the witness was produced; but the court may require the party making the application to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial must not be postponed.

No continuance for more than ten days to be granted unless upon filing of undertaking.

§ 3583. s 763. No adjournment must unless by consent, be granted for a period longer than ten days, upon the application of either party, except upon condition that such party file an undertaking in an amount fixed by the court, with two sureties, to be approved by the justice, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying, not exceeding the sum specified in the undertaking.

Issues defined, and the different kinds.

§ 3584. s 764. Issues arise upon the pleadings, when a fact or conclusion of law is maintained by one party and is controverted by the other. They are of two kinds: 1, of law; and, 2, of fact.

Issue of law how raised.

§ 3585. s 765. An issue of law arises upon a demurrer to the complaint or answer, or to some part thereof.

Issue of fact, how raised.

§ 3586. s 766. An issue of fact arises:

1. Upon a material allegation in the complaint controverted by the answer; and,
2. Upon new matter in the answer, except an issue of law is joined thereon.

Issue of law, how tried.

§ 3587. s 767. An issue of law must be tried by the court.

Issue of fact, how tried.

§ 3588. s 768. An issue of fact must be tried by a jury, unless a jury is waived, in which case it must be tried by the court.

Jury, how waived.

§ 3589. s 769. A jury may be waived:

1. By consent of parties, entered in the docket.

2. By a failure of either party to demand a jury before the commencement of the trial of an issue of fact.

3. By the failure of either party to appear at the time fixed for the trial of an issue of fact.

§ 3590, s 770. If either party fails to appear at the time fixed for trial, the trial may proceed at the request of the adverse party. Either party failing to appear.

§ 3591, s 771. The challenges are either peremptory, or for cause. Each party is entitled to three peremptory challenges. Either party may challenge for cause on any grounds set forth as grounds for such challenge in the district court. Challenges for cause must be tried by the court. Challenges to jurors.

§ 3592, s 772. When the cause of action or counter claim arises upon an account or instrument for the payment of money only, the court, at any time before the trial, may, by an order under his hand, require the original to be exhibited to the inspection of, and a copy to be furnished to the adverse party, at such time as may be fixed in the order: or if such order is not obeyed, the account or instrument cannot be given in evidence. Manner of producing a written instrument.

§ 3593, s 773. If the plaintiff annex to his complaint, or file with the justice at the time of issuing the summons, the original, or a copy of the promissory note, bill of exchange, or other written obligation for the payment of money, upon which the action is brought, the defendant is deemed to admit the genuineness of the signatures of the makers, indorsers, or assignors thereof, unless he specifically denies the same in his answer, and verify the answer by his oath. If a copy of an instrument be filed, the signatures deemed admitted.

§ 3594, s 774. Judgments upon confession may be entered up in any justice's court specified in the confession in any amount of which the justice has jurisdiction. Judgment of confession.

§ 3595, s 775. Judgment that the action be dismissed without prejudice to a new action, may be entered, with costs, in the following cases: Judgment by dismissal.

1. When the plaintiff voluntarily dismisses the action before it is finally submitted.

2. When he fails to appear at the time fixed by the justice for the trial, or within one hour thereafter. March 11, 1886.

3. When, after a demurrer to the complaint has been

sustained, the plaintiff fails to amend it within the time allowed by the court.

4. When it is objected at the trial, and appears by the evidence that the action is brought in the wrong county, or precinct, or city; but if the objection is taken and overruled, it is cause only of reversal on appeal, and does not otherwise invalidate the judgment: if not taken at the trial, it is waived.

Judgment
upon verdict.

§ 3596. s 776. When a trial by jury has been had, judgment must be entered by the justice at once in conformity with the verdict.

Judgment
after trial by
the court.

§ 3597. s 777. When the trial is by the court, judgment must be entered at the close of the trial, or within two days thereafter.

Judgment,
how entered
when defend-
ant subject to
arrest.

§ 3598. s 778. The judgment in justices' courts must be entered substantially in the form required by section 548 of this Code. When the judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, the fact that the defendant is so subject must be stated in the judgment.

If the sum
found due ex-
ceeds the juris-
diction, etc.

§ 3599. s 779. When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess and judgment may be rendered for the residue.

Offer to com-
promise before
trial.

§ 3600. s 780. If the defendant at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued, but if he does not accept such offer before the trial, and fail to recover in the action a sum in excess of the offer, he cannot recover costs, but costs must be adjudged against him from the time of the offer, and if he recover, be deducted from his recovery. But the offer and failure to accept it can not be given in evidence to affect the recovery otherwise than as to costs.

Costs must be
included in the
judgment.

§ 3601. s 781. The justice must tax and include in the judgment, the costs allowed by law to the prevailing party.

Abstract of
judgment.

§ 3602. s 782. The justice, on the demand of a party in whose favor judgment is rendered, must give him an abstract of the judgment in substantially the following form (filling blanks according to the fact):

* Territory of Utah, county of ——. — plaintiff vs. — defendant, in justice's court before —, justice of the peace, — precinct or city, —, 188—, (insert date of ab-

abstract) judgment entered for plaintiff, (or defendant) for \$——, on the —— day of ——, 188—. I certify that the foregoing is a correct abstract of a judgment rendered in said action in my court, or (as the case may be) in the court of ——, justice of the peace, as appears by his docket now in my possession as his successor in office.

———, Justice of the Peace.

§ 3603. s 783. The abstract may be filed and docketed in the office of the district clerk of the judicial district in which the judgment was rendered, and must be docketed in the judgment docket of the district court thereof. The time of the receipt of the abstract by the clerk must be noted by him thereon, and entered in the docket.

Abstract may be filed and docketed in clerk's office.

§ 3604. s 784. From the time of the docketing in the district clerk's office, execution may be issued thereon by the district clerk to the United States marshal, or to the sheriff of any county in the Territory, where the same is to be served, in the same manner and with like effect as if issued on judgments of the district court.

Effect of docketing.

§ 3605. s 785. A judgment rendered in justice's court creates no lien upon any lands of the defendant, unless such an abstract is filed and docketed in the office of the clerk of the district court of the judicial district in which the lands are situated; when so filed and docketed, such a judgment is a lien upon the real property of the judgment debtor, not exempt from execution, situated in that judicial district, for the period of five years from the date of the judgment unless the judgment be previously satisfied.

Judgment not a lien unless abstract is docketed.

CHAPTER VI.

EXECUTIONS FROM JUSTICES' COURTS.

SECTION.

3606 Executions may issue at any time within five years.
 3607 Execution, contents of.
 3608 Removal of execution.

SECTION.

3609 Duty of officer receiving execution.
 3610 Certain provisions made applicable.

Execution may issue at any time within five years.

§ 3606. s 790. Execution for the enforcement of a judgment of a justice's court, may be issued on the application of the party entitled thereto, at any time within five years from the entry of judgment.

Execution, contents of.

§ 3607. s 791. The execution when issued by a justice shall be directed to the sheriff, or to a constable of the county, and subscribed by the justice by whom the judgment was rendered, or by his successor in office. It shall intelligibly refer to the judgment, by stating the names of the parties, and the name of the justice before whom, and of the county and precinct where, and the time when it was rendered, the amount of the judgment, if it be for money, and if less than the whole is due, the true amount due thereon. It must contain, in like cases, similar directions to the sheriff or constable, as are required in executions issued from the district court.

Renewal of execution.

§ 3608. s 792. An execution may, at the request of the judgment creditor, be renewed before the expiration of the time fixed for its return, by the word "renewed" written thereon, with the date thereof and subscribed by the justice. Such renewal has the effect of an original issue, and may be repeated as often as necessary. If an execution is returned unsatisfied, another may be afterwards issued.

Duty of officer receiving execution.

§ 3609. s 793. The sheriff or constable to whom the execution is directed, must execute the same in the same manner as the sheriff is required to proceed upon executions directed to him, and the constable when the execution is directed to him, is vested for that purpose with all the power of the sheriff.

Certain provisions made applicable.

§ 3610. s 794. The provisions of this Code as to proceedings supplementary to execution in the district court, are applicable to justices' courts, the necessary changes and substitutions being made therein.

CHAPTER VII.

GENERAL PROVISIONS RELATING TO JUSTICES' COURTS.

SECTION.	SECTION.
3611 Contempts, justice may punish for.	3623 If two justices be successors, probate judge to determine, etc.
3612, 3613 Proceedings for contempts.	3624 Subpœnas and final process issued to any part of county.
3614 Punishment for contempts.	3625 Blanks must be filed in all papers except subpœnas.
3615 The conviction must be entered in docket	3626 Justice to receive all moneys collected, and pay same to parties.
3616 Docket, what to contain.	3627 In case of disability of justice, another justice may attend on his own behalf.
3617 Entries therein primary evidence of the fact.	3628 Security of costs.
3618 Alphabetical index to docket.	3629 Costs.
3619 Dockets must be delivered to successor.	3630 Provisions of Code applicable.
3620 Where to be deposited when office becomes vacant and before successor is appointed.	3631 Deposit in lieu of undertaking.
3621 May issue execution or other process upon the docket of his predecessor.	
3622 Successor of a justice, who shall be deemed.	

§ 3611. s 800. A justice may punish, as for contempt, persons guilty of the following acts, and no other: Contempts, justice may punish for.

1. Disorderly, contemptuous or insolent behavior toward the justice while holding court, tending to interrupt the due course of a trial or other judicial proceeding.

2. A breach of the peace, boisterous conduct, or violent disturbance in the presence of the justice, or in the immediate vicinity of the court held by him, tending to interrupt the due course of a trial or other judicial proceeding.

3. Disobedience or resistance to the execution of a lawful order or process, made or issued by him.

4. Disobedience to a subpœna duly served, or refusing to be sworn, or to answer as a witness.

5. Rescuing any person or property in the custody of an officer by virtue of an order or process of the court held by him.

§ 3612. s 801. When a contempt is committed in the immediate view and presence of the justice, it may be pun- Proceeding for contempts.

ished summarily: to that end an order must be made reciting the facts, as they occurred, and adjudging that the person proceeded against is thereby guilty of contempt, and that he be punished as therein prescribed.

Same.

§ 3613. s 802. When the contempt is not committed in the immediate view and presence of the justice, a warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brought before the justice immediately, when an opportunity to be heard in his defense or excuse must be given. The justice may thereupon discharge him, or may convict him of the offence.

Punishments for contempts.

§ 3614. s 803. A justice may punish for contempts by fine or imprisonment, or both: such fine not to exceed in any case one hundred dollars, and such imprisonment one day.

The conviction must be entered in docket.

§ 3615. s 804. The conviction, specifying particularly the offence and the judgment thereon, must be entered by the justice in his docket.

Docket, what to contain.

§ 3616. s 805. Every justice must keep a book, denominated a "docket," in which must be entered:

1. The title of every action or proceeding.
2. The object of the action or proceeding; and, if a sum of money be claimed, the amount thereof.
3. The date of the summons and the time of its return: and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of the fact.
4. The time when the parties, or either of them, appear, or their non-appearance, if default be made; a minute of the pleadings and motions, if in writing, referring to them; if not in writing, a concise statement of the material parts of the pleadings.
5. Every adjournment, stating on whose application, and to what time.
6. The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the return of the jury, and for the trial.
7. The names of the jurors who appear and are sworn, the names of all witnesses sworn, and at whose request.
8. The verdict of the jury and when received. If the

jury disagree and are discharged, the fact of such disagreement and discharge.

9. The judgment of the court, specifying the costs included, and the time when rendered.

10. The issuing of the execution, when issued, and to whom; the renewals thereof, if any, and when made, and a statement of any money paid to the justice, and when and by whom.

11. The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed.

§ 3617. s 806. The several particulars of the last section specified must be entered under the title of the action to which they relate, and, unless otherwise in this Code provided, at the time when they occur. Such entries in a justice's docket, or a transcript thereof, certified by the justice, or his successor in office, are primary evidence of the facts so stated.

Entries therein primary evidence of the fact.

§ 3618. s 807. A justice must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs must be entered in the index in the alphabetical order of the first letter of the family name.

Alphabetical index to docket must be kept

§ 3619. s 808. Every justice of the peace, upon the expiration of his term of office, must deposit with his successor his official dockets and all papers filed in his office, as well his own as those of his predecessors or any other which may be in his custody, to be kept as public records.

Dockets must be delivered to successor.

§ 3620. s 809. If the office of a justice become vacant by his death or removal from the precinct or city, or otherwise, before his successor is elected and qualified, the docket and papers in possession of such justice must be deposited in the office of some other justice in the precinct or city, to be by him delivered to the successor of such justice. If there is no other justice in the precinct or city, then the docket and papers of such justice must be deposited in the office of the county clerk of the county to be by him delivered to the successor in office of such justice.

Where to be deposited when office becomes vacant, and before successor is appointed.

§ 3621. s 810. Any justice with whom the docket of his predecessor or of another justice is deposited, has and may exercise over all actions and proceedings entered in such docket, the same jurisdiction as if originally commenced

May issue execution or other process upon the docket of his predecessor.

before him. In case of the creation of a new county, or the change of the boundary between two counties, any justice into whose hands the docket of a justice formerly acting as such within the same territory, may come, is for the purposes of this section, considered the successor of such former justice.

Successor of a justice, who shall be deemed

§ 3622. s 811. The justice elected or appointed to fill a vacancy, is the successor of the justice whose office became vacant before the expiration of a full term. When a full term expires, the same or another person elected to take the office in the same precinct or city, from that time is the successor.

If two justices be appointed, the probate judge to determine etc.

§ 3623. s 812. When two or more justices are equally entitled, under the last section, to be deemed the successors in office of the justice, the judge of the probate court for the county must, by a certificate subscribed by him and filed in the office of the county clerk, designate which justice is the successor of a justice going out of office, or whose office has become vacant.

Subpoenas and final process issued to any part of county.

§ 3624. s 813. Justices of the peace may issue subpoenas in any action or proceeding in the courts held by them, and final process on any judgment recovered therein, to any part of the county.

Blanks must be filled in all papers, except subpoenas.

§ 3625. s 814. The summons, execution, and every other paper made or issued by a justice, except a subpoena, must be issued without a blank to be filled by another, otherwise it is void.

Justice to receive all moneys collected, and pay same to parties.

§ 3626. s 815. Justices of the peace must receive from the sheriff or constable of their county all moneys collected on any process or order issued from their courts respectively, and must pay the same, and all moneys paid to them in their official capacity, over to the parties entitled or authorized to receive them without delay.

In case of disability of justice, another justice may attend on his own behalf.

§ 3627. s 816. In case of the sickness, or other disability, or necessary absence of a justice on a return day of a summons, or at the time appointed for a trial, another justice of the same precinct or city, or an adjoining precinct of the county, may, at his request, attend in his behalf, and thereupon is vested with the power for the time being, of the justice before whom the summons was returnable. In that case, the proper entry of the proceedings before the attending justice, subscribed by him, must be made in the docket of the justice before whom the summons was returnable. If the

case is adjourned, the justice before whom the summons was returnable may resume jurisdiction.

§ 3628. s 817. Justices of the peace may in all cases ^{Security for Costs.} require a deposit of money, or an undertaking, as security ^{March 11, 1886.} for costs of court, before issuing a summons. If the plaintiff is a non-resident, however, the defendant may demand that the plaintiff make a deposit of money or give an undertaking with two good sureties in any sum not exceeding one hundred dollars, as the court may determine, for payment of costs adjudged against the plaintiff; and all proceedings shall stop unless such undertaking is given, and if not given within twenty days, the suit shall be dismissed without prejudice.

§ 3629. s 818. The prevailing party in justices' courts ^{Costs.} is entitled to costs of the action, and also of any proceedings taken by him in aid of an execution, issued upon any judgment recovered therein.

§ 3630. s 819. Justices' courts being courts of peculiar ^{Provisions of Code applica-} and limited jurisdiction, only those provisions of this Code ^{ble} which are, in their nature, applicable to the organization, powers and course of proceedings in justices' courts, or which have been made applicable by special provisions in this Code, are applicable to justices' courts and the proceedings therein.

§ 3631. s 820. In all civil cases arising in justices' ^{Deposit in lieu of undertak-} courts, wherein an undertaking is required as prescribed in ^{ing.} this Code, the plaintiff or defendant may deposit with said justice a sum of money equal to the amount of the required undertaking, which may be received and held by the justice in place of said undertaking.

TITLE XII.

APPEALS IN CIVIL ACTIONS.

CHAPTER I.

APPEALS IN GENERAL.

SECTION.	SECTION.
3632 Judgment and orders may be reviewed.	3643 Undertaking may be in one instrument or several.
3633 Orders made out of court without notice may be reviewed by judge.	3644 Justification of sureties on undertaking on appeal.
3634 Party aggrieved may appeal, names of parties.	3645 Undertakings in cases not specified.
3635 Within what time appeal may be taken.	3646 What papers to be used on an appeal from the judgment.
3636 Appeal, how taken.	3647 What papers used on appeal from judgment rendered on appeal.
3637 Undertaking or deposit on appeal.	3648 What papers used on appeal from order granting or refusing new trial.
3638 Undertaking on appeal from a money judgment.	3649 Copies and undertakings, how certified.
3639 Appeal from a judgment for delivery of documents.	3650 When an appeal may be dismissed, when not.
3640 Appeal from a judgment directing the execution of a conveyance, etc.	3651 Effect of dismissal.
3641 Undertaking on appeal concerning real property.	3652 What may be reviewed on an appeal from judgment.
3642 Stay of proceedings, the security on appeal may be limited when appellant is executor.	3653 Remedial powers of appellate court.
	3654 On judgment on appeal, remittitur must be certified to.

Judgment and orders may be reviewed.

§ 3632. s 825. A judgment or order in a civil action, except when expressly made final, may be reviewed as prescribed in this Code and not otherwise.

Orders made out of court without notice may be reviewed by judge.

§ 3633. s 826. An order made out of court, without notice to the adverse party, may be vacated or modified without notice by the judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made.

Party aggrieved may appeal. Names of parties.

§ 3634. s 827. Any party aggrieved may appeal in the cases prescribed in this Code. The party appealing is known as the appellant, and the adverse party as the respondent.

§ 3635. s 828. An appeal may be taken to the supreme court from the district court: Within what time appeal may be taken

1. From a final judgment in an action or special proceeding commenced in the court in which the same is rendered, within one year after the entry of judgment. But an exception to the decision or verdict on the ground that it is not supported by the evidence, cannot be reviewed on an appeal from the judgment, unless the appeal is taken within sixty days after the rendition of the judgment.

2. From a judgment rendered on appeal from an inferior court, within ninety days after the entry of such judgment.

3. From an order granting or refusing a new trial, from an order granting or dissolving an injunction, from an order refusing to grant or dissolve an injunction, from an order dissolving or refusing to dissolve an attachment, from an order granting or refusing to grant a change of the place of trial, from any special order made after final judgment, and from an interlocutory judgment in actions for partition of real property, and from an order confirming, changing, modifying, or setting aside the report in whole or in part of the referees in actions for the partition of real property, in the cases mentioned in the provisions of this Code relative to the partition of real property, within sixty days after the order or interlocutory judgment is made and entered in the minutes of the court, or filed with the clerk.

§ 3636. s 829. An appeal is taken by filing with the clerk of the court in which the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a similar notice on the adverse party or his attorney. Appeal, how taken. The order of service is immaterial, but the appeal is ineffectual for any purpose unless within five days after service of the notice of appeal an undertaking be filed, or a deposit of money be made with the clerk, as hereinafter provided, or the undertaking be waived by the adverse party in writing.

§ 3637. s 830. The undertaking on appeal must be in writing, and must be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, or on a dismissal thereof, not exceeding three hundred dollars; or that sum must be deposited with the clerk Undertaking or deposit on appeal.

with whom the judgment or order was entered, to abide the event of the appeal.

Undertaking
on appeal
from a money
judgment.

§ 3638. s 831. If the appeal be from a judgment or order directing the payment of money, it does not stay the execution of the judgment or order, unless a written undertaking be executed on the part of the appellant by two or more sureties, to the effect that they are bound in double the amount named in the judgment or order; that if the judgment or order appealed from, or any part thereof be affirmed, or the appeal be dismissed, the appellant will pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal, and that if the appellant does not make such payment within thirty days after the filing of the remittitur from the supreme court in the court from which the appeal is taken, judgment may be entered on motion of the respondent, in his favor against the sureties, for such amount, together with the interest that may be due thereon, and the damages and costs which may be awarded against the appellant upon the appeal. If the judgment or order appealed from be for a greater amount than two thousand dollars, and the sureties do not state in their affidavits of justification accompanying the undertaking that they are each worth the sum specified in the undertaking, the stipulation may be that the judgment to be entered against the sureties shall be for such amounts only as in their affidavits they may state they are severally worth, and judgment may be entered against the sureties by the court from which the appeal is taken, pursuant to the stipulations herein designated. When the judgment or order appealed from is made payable in a specified kind of money or currency, the judgment entered against the sureties upon the undertaking must be made payable in the same kind of money or currency.

Appeal from a
judgment for
delivery of
documents.

§ 3639. s 832. If the judgment or order appealed from direct the assignment or delivery of documents, or personal property, the execution of the judgment or order cannot be stayed by appeal unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the court or the judge thereof may appoint, or unless an

undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the court, or the judge thereof may direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

§ 3640. s 833. If the judgment or order appealed from, direct the execution of a conveyance or other instrument, the execution of the judgment or order cannot be stayed by the appeal until the instrument is executed and deposited with the clerk with whom the judgment or order is entered, to abide the judgment of the appellate court.

Appeal from a judgment directing the execution of a conveyance, etc.

§ 3641. s 834. If the judgment or order appealed from, direct the sale or delivery of possession of real property, the execution of the same cannot be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect, that during the possession of such property by the appellant, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment be affirmed or the appeal dismissed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of the possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the judge of the court by which the judgment was rendered or order made, and which must be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking must also provide for the payment of such deficiency.

Undertaking on appeal concerning real property.

§ 3642. s 835. Whenever an appeal is perfected, as provided in the preceding sections of this Chapter, it stays all further proceedings in the court below, upon the judgment or order appealed from, or upon the matter embraced therein; and releases from levy property which has been levied upon under execution issued upon such judgment; but the court below may proceed upon any other matter embraced in the action, and not affected by the order appealed from. And the court below may, in its discretion dispense with or limit the security required by this Chapter, when the appellant is an executor, administrator, trustee, or other person acting in another's right. An appeal does not continue in force an attachment, unless an undertaking be executed and filed on

Stay of proceedings.

The security on appeal may be limited when appellant is executor.

the part of the appellant, by at least two sureties, in double the amount of the debt claimed by him; that the appellant will pay all costs and damages which the respondent may sustain by reason of the attachment, in case the order of the court below be sustained, and unless, within twenty days after the entry of the order appealed from, such appeal be perfected.

Undertaking
may be in one
instrument or
several

§ 3643. s 836. The undertakings prescribed by sections 830, 831, 832 and 834 may be in one instrument or several, at the option of the appellant.

Justification
of sureties on
undertaking
on appeal.

§ 3644. s 837. The adverse party may except to the sufficiency of the sureties to the undertakings mentioned in sections 830, 831, 832, and 834 at any time within thirty days after the filing of such undertakings; and, unless they or other sureties, within twenty days after the appellant has been served with notice of such exception, justify before a judge of the court below, or clerk thereof, upon five days' notice to the respondent, of the time and place of justification, execution of the judgment order, or decree appealed from is no longer stayed; and in all cases where an undertaking is required on appeal by the provisions of this Chapter, a deposit in the court below of the amount of the judgment appealed from, and the three hundred dollars, in addition, is equivalent to filing the undertaking; and in all cases the undertaking or deposit may be waived by the written consent of the respondent.

Undertakings
in cases not
specified.

§ 3645. s 838. In cases not provided for in sections 831, 832, 833 and 834, the perfecting of an appeal by giving the undertaking, or making the deposit mentioned in section 830, stays proceedings in the court below, upon the judgment or order appealed from, except where it directs the sale of perishable property, in which case the court below may order the property to be sold and the proceeds thereof to be deposited to abide the judgment of the appellate court. And except, also, where the order grants, or refuses to grant a change of the place of trial of an action.

What papers
to be used on
an appeal from
the judgment.

§ 3646. s 839. On appeal from a final judgment the appellant must furnish the court with a copy of the notice of the appeal, of the judgment roll, and of any bill of exceptions or statement in the case, upon which the appellant relies. Any statement used on motion for a new trial, or settled after decision of such motion, when the motion is

made upon the minutes of the court, as provided in section 538, or any bill of exceptions settled, as provided in sections 525 or 526, is used on motion for a new trial, may be used on appeal from a final judgment equally as upon appeal from the order granting or refusing the new trial.

§ 3647. s 840. On appeal from a judgment rendered on an appeal, or from an order, except an order granting or refusing a new trial, the appellant must furnish the court with a copy of the notice of the appeal, of the judgment or order appealed from, and of papers used on the hearing in the court below.

What papers used on appeal from judgment rendered on appeal.

§ 3648. s 841. On an appeal from an order granting or refusing a new trial, the appellant must furnish the court with a copy of the notice of appeal, of the order appealed from, and of the papers designated in section 538 of this Code.

What papers used on appeal from order granting or refusing new trial.

§ 3649. s 842. The copies provided for in the last three sections must be certified to be correct by the clerk or the attorneys, and must be accompanied with a certificate of the clerk or attorneys, that an undertaking on appeal, in due form, has been properly filed, or a stipulation of the parties waiving an undertaking.

Copies and undertakings, how certified.

§ 3650. s 843. If the appellant fails to furnish the requisite papers, the appeal may be dismissed; but no appeal can be dismissed for insufficiency of the undertaking, thereon, if a good and sufficient undertaking, approved by a justice of the supreme court, be filed in the supreme court before the hearing upon motion to dismiss the appeal.

When an appeal may be dismissed. When not.

§ 3651. s 844. The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

Effect of dismissal.

§ 3652. s 845. Upon an appeal from a judgment, the court may review the verdict or decision, or any intermediate order, if excepted to, which involves the merits or necessarily affects the judgment, except a decision or order from which an appeal might have been taken.

What may be reviewed on an appeal from judgment.

§ 3653. s 846. When the judgment or order is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as the restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment or had under process issued upon the judgment on

Remedial powers of appellate court.

the appeal from which the proceedings were not stayed; and for relief in such cases, the appellant may have his action against the respondent enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale. When it appears to the appellate court that the appeal was made for delay, it may add to the cost such damages as may be just.

On judgment
on appeal, re-
mittitur must
be certified to.
Feby. 20, 1888.

§ 3654. s 847. When judgment is rendered upon the appeal, it must be certified by the clerk of the supreme court to the clerk with whom the judgment roll is filed, or the order appealed from is entered. In cases of appeal from the judgment, the clerk with whom the roll is filed must attach the certificate to the judgment roll, and enter a minute of the judgment of the supreme court on the docket against the original entry. In cases of appeal from an order, the clerk must enter at length in the records of the court the certificate received, and minute against the entry of the order appealed from, a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified, by the supreme court on appeal. *Provided*, That if within twenty days after filing of the decision with the clerk of the said court or such further time as the court or one of the justices may allow, if the court be not in session, the party against whom the judgment has been entered may move the court for a re-hearing of said cause, by his petition in writing filed for that purpose. Such petition shall operate as a stay of proceedings until a decision of the motion therein. The petition shall state the grounds upon which it is based, and shall present at large the points, authorities and reasons relied upon therefor and shall be supported by the certificate of the attorney of the party, if he has appeared by attorney, to the effect, that in his opinion, there is good reason to believe the judgment objected to is erroneous and the cause ought to be re-examined. *Provided further*, That in all cases, where on notice to the party against which the judgment is entered in any case, the party does not signify an intention to move for a re-hearing, the court may order a remittitur at any time. (1)

(1) Amendment took effect June 1, 1888.

CHAPTER II.

NEW TRIALS IN, AND APPEALS FROM, JUSTICES' COURT TO THE
DISTRICT COURT.

SECTION.

SECTION.

- 3655 When new trial may be granted. 3659 Upon the appeal, must transmit
 3656 Application, how made. the case.
 3657 Appeal, within what time must 3660 Undertaking must be filed,
 be taken, and how. amount of.
 3658 Appealed cases to be heard anew 3661 Filing the undertaking stays all
 proceedings.

§ 3655. s 852. A new trial may be granted by the justice, on motion, within ten days after the entry of judgment, When new trial may be granted.
 for any of the following causes:

1. Accident or surprise, which ordinary prudence could not have guarded against.

2. Excessive damages, appearing to have been given under the influence of passion.

3. Insufficiency of the evidence to justify the verdict or other decision.

4. Newly discovered evidence material for the party making the application, which he could not with reasonable diligence have discovered and produced at the time.

§ 3656. s 853. The application shall be made upon affidavit and notice. The affidavit shall be filed with the justice, with a statement of the grounds upon which the party intends to rely. The adverse party may use counter affidavits on the motion, provided they are filed one day previous to the hearing of the motion. Application how made.

§ 3657. s 854. Any party dissatisfied with a judgment rendered in a justice's court may appeal therefrom to the district court of the judicial district embracing the precinct or city where the judgment was rendered, at any time within thirty days after the rendition of judgment. The appeal shall be taken by filing a notice thereof with the justice, and serving a copy on the adverse party. Appeal within what time must be taken, and how.

§ 3658. s 855. All causes appealed to the district court shall be heard anew in said court, and said court may regulate

Appealed cases to be amended.
Feb'y. 16, 1888.

by rule the practice in such cases, in all respects not provided for by statute; *Provided*, That pleadings in the district court in said cases may be amended in all respects in the same manner, and upon the same terms as are now or hereafter may be provided for the amendment of pleadings, in cases originally commenced in the district court.

Upon the appeal must transmit the case.

§ 3659. § 856. Upon receiving the notice of appeal, and on payment of the fees of the justice, for making the transcript, and filing an undertaking as required in the next section, the justice shall, within five days, transmit to the clerk of the district court a certified copy of his docket, the pleadings, all notices, motion and other papers filed in the cause, the notice of appeal and undertaking filed; and the justice may be compelled by the district court, by an order entered upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice, by the party or his attorney. In the district court either party may have the benefit of all legal objections made in the justice's court.

Undertaking must be filed.
Amount of.

§ 3660. § 857. An appeal from a justice's court shall not be effectual for any purpose, unless an undertaking be filed within five days after filing the notice of appeal, with two or more sureties, in the sum of one hundred dollars, for the payment of the costs on the appeal, or if a stay of proceedings be claimed, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money, or twice the value of the property, including costs, when the judgment is for the recovery of specific personal property, and shall be to the effect, when the action is for the recovery of money, that the plaintiff will pay the amount of the judgment appealed from, and all costs if the appeal be withdrawn or dismissed, or the amount of any judgment, and all costs that may be recovered against him in said action in the district court. When the action is for the recovery of specific personal property, the undertaking shall be to the effect that the appellant will pay the judgment and costs appealed from, and obey the order of the court made therein, if the appeal be withdrawn or dismissed, or will pay the amount of any judgment and costs which may be recovered against him in said action in the district court, and will obey any order, by the court therein. The undertaking shall be accompanied by the affidavits of the sureties, that they are

residents of the county, and are each worth the amount specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution. The adverse party may, however, except to the sufficiency of the sureties, within two days after the filing of the undertaking, and unless they, or other sureties, justify before the justice from whose court the appeal is taken within two days thereafter, upon notice to the adverse party, the appeal shall be regarded as if no undertaking had been given. A deposit of the amount of the judgment appealed from, including all costs, or the value of the property and all costs, in actions for the recovery of specific personal property, with the justice, shall be equivalent to the filing of the undertaking in this section mentioned; and in such cases the justice shall transmit the money to the clerk of the district court, to be by him paid out on the order of the court.

§ 3661. s 858. If an execution be issued, on the filing of the undertaking, staying all proceedings, the justice shall by order direct the officer to stay all proceedings on the same. Such officer must, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property or proceeds thereof, as may be necessary to pay the same.

Filing the undertaking stays all proceedings.

TITLE XIV.*

OF MISCELLANEOUS PROVISIONS.

CHAPTER I.

SECTION.

3662 Parties not summoned in action on joint contract may be summoned after judgment.
 3663 Summons in that case, what to contain, and how served.
 3664 Affidavit to accompany summons

SECTION.

3665 Answer, when filed and what it may contain.
 3666 What constitutes the pleadings in the case.
 3667 Issues, how tried.

Parties not summoned in actions on joint contract may be summoned after judgment.

§ 3662. s 863. When a judgment is recovered against one or more of several persons, jointly indebted upon an obligation, by proceeding as provided in section 272, those who were not originally served with the summons and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons.

Summons in that case what to contain and how served.

§ 3663. s 864. The summons, as provided in the last section, must describe the judgment and require the person summoned to show cause why he should not be bound by it, and must be served in the same manner and returnable within the same time as the original summons. It is not necessary to file a new complaint.

Affidavit to accompany summons.

§ 3664. s 865. The summons may be accompanied by an affidavit of the plaintiff, his agent, representative or attorney, that the judgment, or some part thereof, remains unsatisfied and must specify the amount due thereon.

Answer, when filed and what it may contain.

§ 3665. s 866. Upon such summons the defendant may answer within the time specified therein, denying the judgment, or setting up any defense which may have arisen subsequently, or he may deny his liability on the obligation upon which the judgment was recovered, except a discharge from such liability by the statute of limitations.

* No Title XIII. in original act.

§ 3666. s 867. If the defendant, in his answer, deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, constitute the written allegations in the case: if he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer, constitute such written allegations.

What constitutes the pleadings in the case

§ 3667. s 868. The issues formed may be tried as in other cases, but when the defendant denies in his answer any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it must be for not exceeding the amount remaining unsatisfied on such original judgment, with interest thereon.

Issues, how tried.

CHAPTER II.

OFFER OF DEFENDANT TO COMPROMISE.

SECTION.

3668 Proceedings on offer of defendant to compromise after suit brought.

§ 3668. s 872. The defendant in any action may at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. If the plaintiff accept the offer and give notice thereof within five days, he may file the offer with proof of notice of acceptance and the clerk must thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer is to be deemed withdrawn and cannot be given in evidence upon the trial; and if the plaintiff fail to obtain a more favorable judgment, he cannot recover costs, but must pay the defendant's costs from the time of the offer.

Proceedings on offer of defendant to compromise after suit brought.

CHAPTER III.

INSPECTION OF WRITINGS.

SECTION.

3669 A party may demand inspection
and copy of a book, paper, etc.

A party may
demand in-
spection and
copy of a book,
paper, etc.

§ 3669. s 877. Any court in which an action is pending or a judge thereof, may, upon notice, order either party to give to the other within a specified time, a copy, or permission to take a copy, of entries of accounts in any book, or of any document or paper in his possession, or under his control, containing business accounts or transactions of a pecuniary character relating to the merits of the action, or the defense therein. If compliance with the order be refused, the court may exclude the entries of accounts, of the book, or the document or paper from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume them to be such as he alleges them to be; and the court may also punish the party refusing for a contempt. This section is not to be construed to prevent a party from compelling another to produce books, papers, or documents when he is examined as a witness.

CHAPTER IV.

MOTIONS AND ORDERS.

SECTION.

3670 Order and motion defined.

3671 Court motions and orders, when made.

3672 Notice of motion, at what time to be given.

SECTION.

3673 Transfer of motion and orders to show cause.

3674 Order for payment of money, how enforced, when and how served.

§ 3670. s 882. Every direction of a court or judge made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion. Order and motion defined.

§ 3671. s 883. Motions must be made in the court in which the action is pending. Orders made out of court may be made by the judge of the court in any part of the Territory. Court motions and orders, when made.

§ 3672. s 884. When a written notice of a motion is required by this Code, or by a rule of the supreme or district court, it must be given, if the court be held in the same county, with both parties, five days before the time appointed for the hearing; otherwise, ten days. When the notice is served by mail, the number of days before the hearing must be increased one day for every twenty-five miles of distance between the place of deposit and the place of service; such increase, however, not to exceed in all thirty days; but in all cases the court, or a judge thereof, may prescribe a shorter time. Notice of motion at what time to be given.

§ 3673. s 885. When a notice of motion is given, or an order to show cause is made returnable, before a judge out of court, and at the time fixed for the motion, or on the return day of the order, the judge is unable to hear the parties, the matter shall stand continued until the further order of the court or judge, or it may be transferred by his order to some other judge. Transfer of motion and orders to show cause.

§ 3674. s 886. Whenever an order for the payment of a sum of money is made by a court, or judge thereof, pursuant to the provisions of this Code, it may be enforced by execution in the same manner as if it were a judgment. Order for payment of money, how enforced.

CHAPTER V.

NOTICES AND FILING AND SERVICE OF PAPERS.

SECTION.

3675 Notices must be in writing.
3676 When and how served.
3677 Service by mail, when.
3678 Service by mail, how.
3679 Appearance: notices after appearance.

SECTION.

3680 Services on non-residents where a party has attorney, service shall be on attorney.
3681 Preceding provisions not to apply to, etc.
3682 Service by telegraph.

Notices must be in writing. When and how served.

§ 3675. s 891. Notices must be in writing, and notices and other papers may be served upon the party or attorney in the manner prescribed in this Chapter, when not otherwise provided by this Code.

When and how served.

§ 3676. s 892. The service may be personal, by delivering to the party or attorney on whom the service is required to be made, or it may be as follows:

1. If upon an attorney it may be made during his absence from his office, by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them, between the hours of eight in the morning and six in the afternoon, in a conspicuous place in the office; or if it be not open so as to admit of such service, then by leaving them at the attorney's residence, with some person of suitable age and discretion: and if his residence be not known, then by putting the same, enclosed in an envelope, into the post office directed to such attorney.

2. If upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of eight in the morning and six in the evening, with some person of suitable age and discretion: and if his residence be not known, by putting the same, enclosed in an envelope, into the post office directed to such party.

Service by mail, when.

§ 3677. s 893. Service by mail may be made where the person making the service, and the person on whom it is to be made, reside or have their offices in different places, between which there is a regular communication by mail.

§ 3678. s 894. In case of service by mail the notice or other paper must be deposited in the post office, addressed to the person on whom it is to be served, at his office or place of residence, and the postage paid. The service is complete at the time of the deposit, but if within a given number of days after such service a right may be exercised, or an act is to be done by the adverse party, the time within which such right may be exercised or act be done is extended one day for every twenty-five miles distance between the place of deposit and the place of address: such extension, however, not to exceed thirty days in all.

Service by
mail, how.

§ 3679. s 895. A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. After appearance, a defendant or his attorney is entitled to notice of all subsequent proceedings of which notice is required to be given. But where a defendant has not appeared, service of notice or papers need not be made upon him unless he is imprisoned for want of bail.

Appearance.
Notice after
appearance.

§ 3680. s 896. When a plaintiff or a defendant, who has appeared resides out of the Territory, and has no attorney in the action or proceeding, the service may be made on the clerk for him. But in all cases where a party has an attorney in the action or proceeding, the service of papers when required, must be upon the attorney instead of the party, except of subpoenas, of writs, and other process issued in the suit, and of papers to bring him into contempt.

Services on
non residents.

Where a party
has attorney,
services shall
be on attorney.

§ 3681. s 897. The foregoing provisions of this Chapter do not apply to the service of a summons or other process, or of any paper to bring a party into contempt.

Preceding pro-
visions not to
apply to, etc.

§ 3682. s 898. Any summons, writ, or order, in any civil suit or proceeding, and all other papers requiring service may be transmitted by telegraph for service in any place, and the telegraphic copy of such writ or order or paper so transmitted may be served or executed by the officers or person to whom it is sent for that purpose, and returned by him, if any return be requisite, in the same manner, and with the same force and effect, in all respects, as the original thereof might be delivered to him, and the officer or person serving or executing the same has the same authority, and is subject to the same liabilities, as if the copy were the original. The original, when a writ, or order, must also be

Service by
telegraph.

filed in the court from which it was issued and a certified copy thereof must be preserved in the telegraph office from which it was sent. In sending it, either the original or the certified copy may be used by the operator for that purpose. Whenever any document to be sent by telegraph bears a seal either private or official, it is not necessary for the operator, in sending the same, to telegraph a description of the seal, or any words or device thereon, but the same may be expressed in the telegraphic copy by the letters "L S" or by the word "seal."

CHAPTER VI.

OF COSTS.

SECTION.	SECTION.
3683 Compensation of attorneys, costs to parties.	3692 Costs, when tender is made before suit brought.
3684 When allowed of course to plaintiffs.	3693 Costs in an action by or against an administrator, etc.
3685 Several actions brought on a single cause of action can carry costs in but one.	3694 Costs in special proceedings to be allowed as in cases on appeal.
3686 When defendant's costs must be allowed.	3695 Filing and service and affidavit of bill of costs.
3687 Costs, when in the discretion of the court.	3696 Costs on appeal, how claimed and recovered.
3688 When the several defendants are not united in interests, costs may be severed.	3697 Interest and costs must be included by the clerk in the judgment.
3689 Prevailing party entitled to costs in appeal cases.	3698 Security for costs.
3690 Referees' fees.	3699 If such security is not given the action may be dismissed.
3691 Continuance, costs may be imposed as condition of.	3700 Costs, when Territory is a party.
	3701 Costs, when county is a party.

Compensation
of attorneys.
Costs to parties.

§ 3683, s 903. The measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to costs and disbursements, as hereinafter provided.

§ 3684. s 904. Costs are allowed of course to the plaintiff, upon a judgment in his favor in the following cases: When allowed of course to plaintiff.

1. In an action for the recovery of real property.

2. In an action to recover the possession of personal property where the value of the property amounts to one hundred dollars or over, such value shall be determined by the jury, court or referee by whom the action is tried.

3. In an action for the recovery of money or damages, when plaintiff recovers one hundred dollars or over.

4. In a special proceeding.

5. In an action which involves the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine.

§ 3685. s 905. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs can be allowed to the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were at the commencement of the previous action openly within the Territory. But the disbursements of the plaintiff must be allowed to him in each action. Several actions brought on a single cause of action can carry costs in but one.

§ 3686. s 906. Costs must be allowed of course to the defendant upon a judgment in his favor in the action mentioned in section 904 and in special proceedings. When defendant's costs must be allowed.

§ 3687. s 907. In other actions than those mentioned in section 904, costs may be allowed or not, and, if allowed, may be apportioned between the parties, on the same or adverse sides, in the discretion of the court, but no costs can be allowed in an action for the recovery of money or damages, when the plaintiff recovers less than one hundred dollars, nor in an action to recover the possession of personal property, when the value of the property is less than one hundred dollars. Costs, when in the discretion of the court.

§ 3688. s 908. When there are several defendants in the actions mentioned in section 904 not united in interest, and making separate defenses, by separate answers, and the plaintiff fails to recover judgment against all, the court must award costs to such of the defendants as have judgment in their favor. When the several defendants are not united in interests, costs may be severed.

Prevailing party entitled to costs in appeal cases.

§ 3689. s 909. In all cases tried in the district court, on appeal, costs must be awarded to the prevailing party.

Referees' fees.

§ 3690. s 910. The fees of referees are five dollars to each, for every day spent in the business of the reference; but the parties may agree in writing upon any other rate of compensation, and thereupon, such rate shall be allowed.

Continuance, costs may be imposed as condition of.

§ 3691. s 911. When an application is made to a court or referee to postpone a trial, the payment of costs occasioned by the postponement, may be imposed in the discretion of the court or referee, as a condition of granting the same.

Costs, when tendered to made before suit brought.

§ 3692. s 912. When in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action, he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court, for the plaintiff, the amount so tendered, and the allegation be found to be true, the plaintiff cannot recover costs, but must pay costs to the defendant.

Costs in an action by or against an administrator, etc.

§ 3693. s 913. In an action prosecuted or defended by an executor, administrator, trustee of express trust, or a person expressly authorized by statute, costs may be recovered as in actions by, and against, a person prosecuting or defending in his own right; but such costs must, by the judgment, be made chargeable only upon the estate, fund, or party represented, unless the court directs the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in the action or defense.

Costs in special proceedings to be allowed as in cases on appeal.

§ 3694. s 914. When the decision of a court of inferior jurisdiction, in a special proceeding, is brought before a court of higher jurisdiction for a review, in any other way than by appeal, the same costs must be allowed as in cases on appeal, and may be collected by execution or in such manner as the court may direct, according to the nature of the case.

Filing and service and affidavit of bill of costs.

§ 3695. s 915. The party in whose favor judgment is rendered, and who claims his costs, must deliver to the clerk, and serve a copy upon the adverse party, within five days after the verdict or notice of the decision of the court or referee, or, if the entry of the judgment on the verdict or decision be stayed, then before such entry is made, a memorandum of the items of his costs and necessary disbursements in the action or proceeding, which memorandum must be verified by the oath of the party, or his attorney or agent or by the clerk of his attorney, stating that to the best of

his knowledge and belief, the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding. A party dissatisfied with the costs claimed, may, within five days after notice of filing of bill of costs, file a motion to have the same taxed by the court in which the judgment was rendered, or by the judge thereof at chambers.

§ 3696. s 916. Whenever costs are awarded to a party by an appellate court, if he claims such costs, he must, within thirty days after the remittitur is filed with the clerk below, deliver to such clerk a memorandum of his costs verified as prescribed by the preceding section, and thereafter he may have an execution therefor as upon a judgment.

Costs on appeal, how claimed and recovered.

§ 3697. s 917. The clerk must include in the judgment entered up by him, any interest on the verdict or decision of the court from the time it was rendered or made, and the costs, if the same have been taxed or ascertained, and he must, within two days after the same are taxed or ascertained, if not included in the judgment, insert the same in a blank, left in the judgment for that purpose, and must make a similar insertion of the costs in the copies and docket of the judgment.

Interest and cost must be included by the clerk in the judgment

§ 3698. s 918. When the plaintiff in an action resides out of the Territory, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff, may be required by the defendant. When required all proceedings in the action must be stayed until an undertaking, executed by two or more persons, is filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the court, or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking is executed and filed.

Security for costs.

§ 3699. s 919. After the lapse of thirty days from the service of notice that security is required, or of an order for new or additional security, upon proof thereof, and that no undertaking as required has been filed, the court, or judge, may order the action to be dismissed.

If such security is not given the action may be dismissed.

§ 3700. s 920. When the Territory is a party and costs are awarded against it, they must be paid out of the Terri-

Costs, when Territory is a party.

torial treasury and the auditor shall draw his warrant therefor on the general fund.

Costs, when
county is a
party.

§ 3701. s 921. When a county is a party and costs are awarded against it, they must be paid out of the county treasury.

CHAPTER VII.

GENERAL PROVISIONS.

SECTION.

3702 Lost papers, how supplied.

3703 Papers without the title of the action, or with defective title, may be valid.

3704 Successive actions on the same contract, etc.

3705 Consolidation of several actions into one.

3706 Actions, when deemed pending.

3707 Actions, to determine adverse claims, and by sureties

3708 Testimony, when to be taken by the clerk.

3709 The clerk must keep a register of actions.

SECTION.

3710 Two or three referees, etc. may do any act.

3711 Time within which an act under this Code to be done, may be extended.

3712 Actions against a sheriff for official acts.

3713 Undertakings mentioned in this Code, requisites of.

3714 People not required to give bonds.

3715 Surety on appeal, bond, when substituted to rights of judgment creditors.

Lost papers,
how supplied.

§ 3702. s 926. If an original pleading or paper be lost, the court may authorize a copy thereof to be filed and used instead of the original.

Papers with-
out the title of
the action, or
with defect-
ive title may
be valid.

§ 3703. s 927. An affidavit, notice or other paper, without the title of the action or proceeding in which it was made, or with a defective title, is as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

Successive ac-
tions on the
same contract,
etc.

§ 3704. s 928. Successive actions may be maintained upon the same contract or transaction whenever after the former action, a new cause of action arises therefrom.

§ 3705. s 929. Whenever two or more actions are pending at one time between the same parties, and in the same court upon causes of action which might have been joined, the court may order the actions to be consolidated.

§ 3706. s 930. An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied.

§ 3707. s 931. An action may be brought by one person against another for the purpose of determining an adverse claim, which the latter makes against the former for money or property upon an alleged obligation; and also against two or more persons, for the purpose of compelling one to satisfy a debt due to the other, for which the plaintiff is bound as a surety.

§ 3708. s 932. On the trial of an action in a court of record, if there is no short-hand reporter of the court in attendance, the court may require the clerk to take down the testimony in writing.

§ 3709. s 933. The clerk must keep among the records of the court, a register of actions. He must enter therein the title of the action, with brief notes under it, from time to time, of all papers filed and proceedings had therein.

§ 3710. s 934. When there are three referees, or three arbitrators, all must meet, but two of them may do any act which might be done by all.

§ 3711. s 935. When an act to be done as provided in this Code, relates to the pleadings in the action, or the undertakings to be filed, or the justification of sureties, or the preparation of statements, or bills of exception or of amendments thereto, or to the service of notices, other than of appeal, the time allowed by this Code may be extended, upon good cause shown, by the court in which the action is pending, or a judge thereof.

§ 3712. s 936. If an action is brought against a sheriff for an act done by virtue of his office, and he give written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein is conclusive evidence of his right to recover against such sureties; and the court, or judge, in vacation, may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

Undertakings
mentioned in
this Code,
requisites of.

§ 3713. s 937. In all cases where an undertaking, with sureties, is required by the provisions of this Code, the officer taking the same must require the sureties to accompany it with an affidavit that they are each residents and householders or freeholders within the Territory, and are each worth the sum specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution; but when the amount specified in the undertaking exceeds two thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

People not re-
quired to give
bonds.

§ 3714. s 938. In any civil action or proceeding where-in the Territory or the people of the Territory is a party plaintiff, or any Territorial officer, in his official capacity, or on behalf of the Territory, or any county, or city, is a party plaintiff or defendant, no bond, written undertaking, or security can be required of the Territory, or the people thereof, or any officer thereof, or of any county, or city, but on complying with the other provisions of this Code, the Territory or the people thereof, or any Territorial officer acting in his official capacity, or any county or city have the same rights, remedies, and benefits, as if the bond, undertaking, or security were given and approved as required by this Code.

Surety on ap-
peal bond
when substi-
tuted to
rights of judg-
ment credi-
tors.

§ 3715. s 939. Whenever any surety on an undertaking on appeal executed to stay proceedings upon a money judgment, pays the judgment, either with or without action, after its affirmation by the appellate court, he is substituted to the rights of the judgment creditor, and is entitled to control, enforce and satisfy such judgment in all respects as if he had recovered the same.

(ACT) PART III.

SPECIAL PROCEEDINGS OF A CIVIL NATURE.

PRELIMINARY PROVISIONS.

SECTION.

3716 Parties, how designated.

SECTION.

3717 Judgment and order same meaning.

§ 3716. s 944. The party prosecuting a special proceeding may be known as the plaintiff, and the adverse party as the defendant. Parties, how designated.

§ 3717. s 945. A judgment in a special proceeding is the final determination of the rights of the parties therein. Judgment and order same meaning as in civil actions. The definitions of a motion and an order in a civil action are applicable to similar acts in a special proceeding.

TITLE I.

OF WRITS OF REVIEW, MANDATE AND PROHIBITION.

CHAPTER I.

WRIT OF REVIEW.

3718 Certiorari defined.

3719 When and by what courts granted.

3720 Application for, how made.

3721 The writ to be directed to the inferior tribunal.

3722 Contents of writ.

3723 Proceedings in inferior court may be stayed or not.

3724 Service of the writ.

3725 The review under the writ, extent of.

3726 A defective return of the writ may be perfected.

3727 Copy of judgment must be sent to inferior tribunal.

3728 Judgment rolls.

Certiorari defined.

§ 3718. s 950. The writ of certiorari may be denominated the writ of review.

When and by what courts granted.

§ 3719. s 951. A writ of review may be granted by any court, except a probate or justice's court, when an inferior tribunal, board or officer exercising judicial functions has exceeded the jurisdiction of such tribunal, board or officer, and there is no appeal, nor in the judgment of the court, any plain, speedy, and adequate remedy.

Application for, how made.

§ 3720. s 952. The application must be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

The writ to be directed to the inferior tribunal, etc.

§ 3721. s 953. The writ may be directed to the inferior tribunal, board, or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the clerk, if there be one, must return the writ with the transcript required.

Contents of writ.

§ 3722. s 954. The writ of review must command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, a transcript of the record and proceeding (describing or referring to them with convenient certainty), that the same may be reviewed by the court, and requiring the party in the meantime to desist from further proceedings in the matter to be reviewed.

Proceedings in inferior court may be stayed or not.

§ 3723. s 955. If a stay of proceedings be not intended the words requiring the stay must be omitted from the writ. These words may be inserted or omitted, in the sound discretion of the court, but if omitted, the power of the inferior court or officer is not suspended or the proceedings stayed.

Service of the writ.

§ 3724. s 956. The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the court.

The review under the writ, extent of.

§ 3725. s 957. The review upon this writ can not be extended, further than to determine whether the inferior tribunal, board or officer has regularly pursued the authority of such tribunal, board or officer.

A defective return of the writ may be perfected.

§ 3726. s 958. If the return to the writ be defective, the court may order a further return to be made. When a full return has been made, the court must hear the parties, or such of them as may attend for that purpose, and may there-

upon give judgment, either affirming, or annulling or modifying the proceedings below.

§ 3727. s 959. A copy of the judgment, signed by the clerk, must be transmitted to the inferior tribunal, board or officer having the custody of the record or proceeding, certified up. Copy of judgment must be sent to inferior tribunal.

§ 3728. s 960. A copy of the judgment, signed by the clerk, entered upon or attached to the writ and return, constitute the judgment roll. Judgment rolls.

CHAPTER II.

WRIT OF MANDATE.

SECTION.	SECTION.
3729 Mandamus defined.	3736 The applicant may demur to the answer or countervail it by proof
3730 When and by what courts granted.	3737 Motion for new trial, when made.
3731 Writ, when and upon what to issue.	3738 The clerk must transmit the verdict to the court where the motion is pending, after which the hearing shall be had on motion.
3732 Writs must be either alternative or peremptory.	3739 If no answer be made, or if it raise immaterial issues, proceedings.
3733 If the application be without notice, the alternative writ may issue, otherwise the peremptory; notice and default.	3740 If the applicant succeed, he may have damages, costs and a peremptory mandate.
3734 The adverse party may answer under oath.	3741 Service of the writ.
3735 If an essential question of fact is raised, the court may order a jury trial.	3742 Penalty of disobedience of writ.

§ 3729. s 964. The writ of mandamus may be denominated a writ of mandate. Mandamus defined.

§ 3730. s 965. It may be issued by any court in this Territory, except a justice's or probate court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station; or to compel the When and by what courts granted

admission of a party to the use and enjoyment of a right or office to which he is entitled and the right to which is not in dispute, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

Writ, when
and upon
what to issue.

§ 3731. § 966. This writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It must be issued upon affidavit, on the application of the party beneficially interested.

Writ must be
either alterna-
tive or per-
emptory.

§ 3732. § 967. The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why he has not done so. The peremptory writ must be in a similar form except that the words requiring the party to show cause why he has not done as commanded, must be omitted and a return day inserted.

If the applica-
tion be with-
out notice the
alternative
writ may
issue, other-
wise the per-
emptory.

§ 3733. § 968. When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative must be first issued; but if the application be upon due notice and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application when given must be at least ten days. The writ cannot be granted by default. The case must be heard by the court, whether the adverse party appear or not.

Notice and de-
fault.

The adverse
party may
answer under
oath.

§ 3734. § 969. On the return day of the alternative, or the day on which the application for the writ is noticed, (or such further day as the court may allow,) the party on whom the writ or notice has been served may show cause by answer under oath, made in the same manner as an answer to a complaint in a civil action.

If an essential
question of
fact is raised,
the court may
order a jury
trial

§ 3735. § 970. If an answer be made, which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and if the proceedings are pending in the supreme court, the verdict certified to that court. The order for trial may also direct the jury to assess any damages which the ap-

plicant may have sustained, in case they find for him; if the order for trial is issued from the supreme court it must designate the judicial district in which the same shall be had.

§ 3736. s 971. On the trial the applicant is not precluded by the answer from any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

Th applicant may demur to the answer or countervail it by proof.

§ 3737. s 972. The motion for a new trial must be made in the court in which the issue of fact is tried.

Motion for new trial when made.

§ 3738. s 973. If no notice of a motion for a new trial be given or, if given, the motion be denied, if the application for the writ is pending in the supreme court the clerk of the district court must within five days transmit to the supreme court a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application in the court in which it is pending upon reasonable notice to the adverse party.

The clerk must transmit the verdict to the court where the motion is pending, after which the hearing shall be had on motion.

§ 3739. s 974. If no answer be made the case must be heard on the papers of the applicant. If the answer raises only questions of law or puts in issue immaterial statements, not affecting the substantial rights of the parties, the court must proceed to hear or fix a day for hearing the argument of the case.

If no answer be made, or if it raise immaterial issues, proceedings.

§ 3740. s 975. If judgment be given for the applicant, he may recover the damages which he has sustained, as found by the jury, or as may be determined by the court or referees, upon a reference to be ordered, together with costs; and for such damages and costs, an execution may issue, and a peremptory mandate must also be awarded without delay.

If the applicant succeed he may have damages, costs, and a peremptory mandate.

§ 3741. s 976. The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not.

Service of the writ.

§ 3742. s 977. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board or person, if it appear to the court that any member of such tribunal, corporation or board, or such person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the court may,

Penalty for disobedience of writ.

upon motion, impose a fine not exceeding five hundred dollars. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ.

CHAPTER III.

WRIT OF PROHIBITION.

SECTION.

3743 Prohibition defined.

3744 When and where issued.

3745 Writ may be alternative or peremptory.

3746 Certain preceding sections apply

SECTION.

3747 Writs of review, mandate and prohibition may issue and be heard at chambers.

3748 Certain provisions applicable.

3749 Same.

Prohibition defined.

§ 3743. s 982. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person, whether exercising functions judicial or ministerial when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

When and where issued.

§ 3744. s 983. It may be issued by any court except probate or justices' courts to an inferior tribunal, or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon affidavit, on the application of the person beneficially interested.

Writ may be alternative or peremptory.

§ 3745. s 984. The writ must be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein, until the further order of the court from which it is issued, and to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further

proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted, and a return day inserted.

§ 3746. s 985. The provisions of the preceding sections from 968 to 977 both inclusive, apply to the proceedings for writ of prohibition. Certain preceding sections apply

§ 3747. s 986. Writs of review, mandate, and prohibition, may be issued by any of the justices of the supreme court, or, by a district judge in vacation, and may, in the discretion of the justice or judge issuing the writ, be made returnable and a hearing thereon be had in vacation. Writs of review, mandate and prohibition may issue and be heard at chambers.

§ 3748. s 987. Except as otherwise provided in this Title, the provisions of this Code relative to civil actions in the district court, are applicable to and constitute the rules of practice in the proceedings mentioned in this Title. Certain provisions applicable.

§ 3749. s 988. The provisions of this Code relative to same, new trials in, and appeals from the district court, except so far as they are inconsistent with the provisions of this Title, apply to the proceedings mentioned in this Title.

TITLE II.

OF CONTESTING CERTAIN ELECTIONS.

SECTION.	SECTION.
3750 Who may contest, and grounds of contest.	3757 When contest to be heard.
3751 Irregularities and improper conduct of judges, when to annul elections.	3758 Clerk to issue citation to respondent.
3752 When not to.	3759 Witnesses, attendance of, how enforced.
3753 Illegal votes, when not to vitiate election.	3760 Power of court; adjournment of court.
3754 Proceedings on contest.	3761 Rules to govern court in trial of contest.
3755 Statement of cause of contest; when based on reception of illegal votes, contestant to deliver list of such to respondent.	3762 Court may declare who was elected.
3756 Statement of causes of contest; want of form not to vitiate.	3763 Fees of officers and witnesses.
	3764 Costs.
	3765 Appeal.
	3766 When election void and office vacant.

§ 3750. s 993. Any elector of a county, precinct, or city, may contest the right of any person declared elected to

Who may con-
test and
grounds of
contest.

an office to be exercised therein, for any of the following grounds:

1. For misconduct on the part of the board of judges, or any member thereof.

2. When the person whose right to the office is contested was not, at the time of the election, eligible to such office.

3. When the person whose right is contested has given to any elector, or inspector, judge, or clerk of the election, any bribe, or reward, or has offered any such bribe or reward, for the purpose of procuring his election, or has committed any other offence against the elective franchise defined by law.

4. On account of illegal votes.

Irregularity
and improper
conduct of
judges, when
to annul elec-
tions.

§ 3751. s 994. No irregularity or improper conduct in the proceedings of the judges, or any of them, is such misconduct as avoids an election, unless the irregularity or improper conduct is such as to procure the person whose right to the office is contested to be declared elected when he had not received the highest number of legal votes.

When not to.

§ 3752. s 995. When any election held for an office exercised in and for a county is contested on account of any misconduct on the part of the board of judges of any precinct election, or any member thereof, the election cannot be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct or precincts, would change the result as to such office in the remaining vote of the county.

Illegal votes,
when not to vi-
tiate elections.

§ 3753. s 996. Nothing in the fourth ground of contest is to be so construed as to authorize an election to be set aside on account of illegal votes, unless it appear that a number of illegal votes has been given to the person whose right to the office is contested, which, if taken from him would reduce the number of his legal votes below the number of votes given to some other person for the same office after deducting therefrom the illegal votes which may be shown to have been given to such other person.

Proceedings
on contest.

§ 3754. s 997. When an elector contests the right of any person declared elected to such office, he must within forty days after the return day of the election, file with the clerk of the district court, of the judicial district within which

such office is to be exercised, a written statement, setting forth specifically:

1. The name of the party contesting such election, and that he is an elector of the district, county, or precinct as the case may be, in which such election was held.

2. The name of the person whose right to the office is contested.

3. The office.

4. The particular grounds of such contest, which statement must be verified by the affidavit of the contesting party, that the matters and things therein contained are true.

§ 3755. s 998. When the reception of illegal votes is alleged as a cause of contest, it is sufficient to state generally, that in one or more specified precincts illegal votes were given to the person whose election is contested, which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony can be received of any illegal votes, unless the party contesting such election deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes, and by whom given, which he intends to prove on such trial; and no testimony can be received of any illegal votes except such as are specified in such list.

Statement of cause of contest.

When based on reception of illegal votes, contestant to deliver list of such to respondent.

§ 3756. s 999. No statement of the grounds of contest will be rejected, nor the proceedings dismissed by any court for want of form, if the grounds of contest are alleged with such certainty as will advise the defendant of the particular proceeding or cause for which such election is contested.

Statement of cause of contest, want of form not to vitiate.

§ 3757. s 1000. Upon the statement being filed, the clerk must inform the judge of the district court thereof; the judge of said court must then by an order to be entered by the clerk, name some day, not less than ten nor more than twenty days from the date of such order, to hear and determine such contested election.

When contest to be heard.

§ 3758. s 1001. The clerk must thereupon issue a citation for the person, whose right to the office is contested, to appear at the time and place specified in the order, which citation must be delivered to the United States marshal or sheriff, and be served either upon the party in person, or, if he cannot be found, by leaving a copy thereof at the house

Clerk to issue citation to respondent.

where he last resided, at least five days before the time so specified.

Witnesses,
attendance of,
how enforced.

§ 3759. s 1002. The clerk must issue subpoenas for witnesses at the request of either party, which must be served as other subpoenas; and the judge shall have full power to issue attachments to compel the attendance of witnesses who have been subpoenaed to attend.

Power of court.

§ 3760. s 1003. The court must meet at the time and place designated, to determine such contested election, and shall have all the powers necessary to the determination thereof. It may adjourn the hearing and trial from day to day until such trial is ended, and may also continue the trial, before its commencement, for any time not exceeding twenty days, for good cause shown by either party upon affidavit, at the costs of the party applying for such continuance.

Adjournment
of court.

Rules to gov-
ern court in
trial or contest.

§ 3761. s 1004. The court must be governed, in the trial and determination of such contested election, by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable; and may dismiss the proceedings if the statement of the cause or causes of the contest is insufficient, or for want of prosecution. After hearing the proofs and allegations of the parties, the court must pronounce judgment in the premises, either confirming or annulling and setting aside such election.

Court may de-
clare who was
elected.

§ 3762. s 1005. If in any such case it appears that another person than the one returned has the highest number of legal votes, the court must declare such person elected.

Fees of officers
and witnesses

§ 3763. s 1006. The clerk, marshal, or sheriff, and witnesses shall receive respectively, the same fees, from the party against whom judgment is given, as are allowed for similar services in other cases.

Costs.

§ 3764. s 1007. If the proceedings are dismissed for insufficiency, or want of prosecution, or the election is by the court confirmed, judgment must be rendered against the party contesting such election, for costs, in favor of the party whose election was contested; but if the election is annulled and set aside, judgment for costs must be rendered against the party whose election was contested, in favor of the party contesting the same. *Primarily*, each party is liable for the costs created by himself, to the officers and witnesses entitled thereto, which may be collected

in the same manner as similar costs are collected in other cases.

§ 3765. s 1008. Either party, aggrieved by the judgment, may appeal therefrom to the supreme court, as in other cases of appeal thereto from the district court.

§ 3766. s 1009. Whenever an election is annulled or set aside by the judgment of the district court, and no appeal has been taken within ten days thereafter, the commission if any has been issued, is void, and the office vacant.

TITLE III.

SUMMARY PROCEEDINGS.

CHAPTER I.

CONFESSION OF JUDGMENT WITHOUT ACTION.

SECTION.

SECTION.

- 3767 Judgment may be confessed for debt due or contingent liability. 3769 Filing statement and entering judgment.
3768 Statement in writing and form thereof. 3770 How in justice's court.

§ 3767. s 1014. A judgment by confession may be entered without action, either for money due or to become due or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this Chapter. Such judgment may be entered in any court having jurisdiction for like amounts.

§ 3768. s 1015. A statement in writing must be made, signed by the defendant and verified by his oath to the following effect:

1. It must authorize the entry of judgment for a specified sum.

2. If it be for money due, or to become due, it must state concisely the facts out of which it arose, and show that the sum confessed therefor is justly due or to become due.

3. If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability, and show that the sum confessed therefor does not exceed the same.

Filing state-
ment and en-
tering judg-
ment.

§ 3769. s 1016. The statement must be filed with the clerk of the court in which the judgment is to be entered, who must indorse upon it, and enter in the judgment book, a judgment of such court for the amount confessed, with five dollars costs. The statement and affidavit, with the judgment indorsed, thereupon becomes the judgment roll.

How, in jus-
tice's court.

§ 3770. s 1017. In a justice's court, where the court has the authority to enter the judgment, the statement may be filed with the justice, who must thereupon enter in his docket a judgment of his court for the amount confessed, with three dollars costs. If a transcript of such judgment be filed with the district clerk, a copy of the statement must be filed with it.

CHAPTER II.

SUBMITTING A CONTROVERSY WITHOUT ACTION.

SECTION.

- 3771 Controversy, how submitted without action.
- 3772 Judgment on as in other cases, but without costs prior to notice of trial.

SECTION.

3773 Judgment may be enforced or appealed from as in an action.

§ 3771. s 1018. Parties to a question in difference which might be the subject of a civil action, may without action agree upon a case containing the facts upon which the

controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought; but it must appear, by affidavit, that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court must thereupon hear and determine the case, and render judgment thereon as if an action were depending.

§ 3772. s 1019. Judgment must be entered in the judgment book, as in other cases, but without costs for any proceeding prior to the trial. The case, the submission, and a copy of the judgment constitutes the judgment roll.

§ 3773. s 1020. The judgment may be enforced in the same manner as if it had been rendered in an action, and is in the same manner subject to appeal.

CHAPTER III.

DISCHARGE OF PRISONERS ON CIVIL PROCESS.

SECTION.	SECTION.
3774 Persons confined may be discharged.	3781 If not discharged, prisoner may again apply, when.
3775 Notice of application.	3782 Discharge final.
3776 Service of notice.	3783 Judgment remains in force.
3777 Examination before judge.	3784 Plaintiff may order discharge of prisoner, etc.
3778 Interrogatories may be in writing.	3785 Plaintiff to advance funds for support of prisoner.
3779 Oath to be administered.	
3780 Order of discharge.	

§ 3774. s 1021. Any person confined in jail on an execution issued on a judgment rendered in a civil action, must be discharged therefrom upon the conditions in this Chapter specified.

§ 3775. s 1022. Such person must cause a notice in writing to be given to the plaintiff, his agent or attorney that at a certain time and place, he will apply to the district judge of the district in which the county in which he may be imprisoned is situated, for the purpose of obtaining a discharge from his imprisonment.

Service of notice.

§ 3776. s 1023. Such notice must be served upon the plaintiff, his agent or attorney, one day at least before the hearing of the application.

Examination before judge.

§ 3777. s 1024. At the time and place specified in the notice, such person must be taken before such judge, who must examine him under oath concerning his estate and property and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed and such judge may also hear any other legal and pertinent evidence that may be produced by the debtor or the creditor.

Interrogatories may be in writing.

§ 3778. s 1025. The plaintiff in the action may, upon such examination, propose to the prisoner any interrogatories pertinent to the inquiry and they must, if required by him, be proposed and answered in writing and the answer must be signed and sworn to by the prisoner.

Oath to be administered.

§ 3779. s 1026. If, upon the examination, the judge is satisfied that the prisoner is entitled to his discharge, he must administer to him the following oath, to-wit: "I, —, do solemnly swear that I have not any estate, real or personal, to the amount of fifty dollars, except such as is by law exempt from being taken in execution, and that I have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to hinder, delay or defraud my creditors, so help me God."

Order of discharge.

§ 3780. s 1027. After administering the oath, the judge must issue an order that the prisoner be discharged from custody and the officer, upon the service of such order, must discharge the prisoner forthwith, if he be imprisoned for no other cause.

If not discharged prisoner may again apply, when.

§ 3781. s 1028. If such judge does not discharge the prisoner, he may apply for his discharge at the end of every succeeding ten days in the same manner as above provided, and the same proceedings must thereupon be had.

Discharge final.

§ 3782. s 1029. The prisoner, after being so discharged, is forever exempt from arrest or imprisonment for the same debt, unless he be convicted of having wilfully sworn falsely upon his examination before the judge or in taking the oath before prescribed.

Judgment remains in force.

§ 3783. s 1030. The judgment against any prisoner who is discharged remains in full force against any estate which may then or at any time afterward belong to him, and

the plaintiff may take out a new execution against the goods and estate of the prisoner, in like manner as if he had never been committed.

§ 3784. s 1031. The plaintiff in the action may at any time order the prisoner to be discharged, and he is not thereafter liable to imprisonment for the same cause of action. Plaintiff may order discharge of prisoner, etc.

§ 3785. s 1032. Whenever a person is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor, his agent or attorney, must advance to the jailor, on such commitment, sufficient money for the support of the prisoner for one week, and must make the like advance for every successive week of his imprisonment, and in case of a failure to do so, the jailor must forthwith discharge such prisoner from custody; and such discharge has the same effect as if made by order of the creditor. Plaintiff to advance funds for support of prisoner.

CHAPTER IV.

SUMMARY PROCEEDINGS FOR OBTAINING POSSESSION OF REAL PROPERTY IN CERTAIN CASES.

SECTION.	SECTION.
3786 Forcible entry defined.	3798 Trial by jury.
3787 Forcible detainer defined.	3799 Showing required of plaintiff; forcible entry or detainer of defendant.
3788 Who guilty of unlawful detainer	3800 Complaint must be amended in certain cases.
3789 Service of notice.	3801 Verdict and judgment.
3790 Courts have jurisdiction.	3802 Verification of complaint and answer.
3791 Parties defendant.	3803 Effect of an appeal upon the judgment.
3792 Parties generally.	3804 Provisions applicable to proceedings under this Chapter.
3793 The complaint; summons to issue.	
3794 What summons must state; when new summons may issue.	
3795 Arrest.	
3796 Judgment by default.	
3797 Defendant may appear, etc.	

§ 3786. s 1033. Every person is guilty of a forcible entry who either:

1. By breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror, enters upon or into any real property; or Forcible entry defined.

2. Who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession.

Forcible detainer defined.

§ 3787. s 1034. Every person is guilty of a forcible detainer who either:

1. By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or

2. Who in the night time, or during the absence of the occupant of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the period of five days, refuses to surrender the same to such former occupant.

The occupant of real property, within the meaning of this subdivision, is one who, within five days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

Who guilty of unlawful detainer.

§ 3788. s 1035. A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

1. Where he continues in possession, in person or by sub-tenant, of the property, or any part thereof, after the expiration of the term for which it is let to him, without permission of his landlord, or his successor in estate of his landlord, if any there be; but in case of a tenancy at will, it must first be terminated by notice of five days.

2. When he continues in possession, in person, or by sub-tenant, without permission of his landlord, or the successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice in writing, requiring its payment, stating the amount which is due, or possession of the property, shall have been served upon him, and if there be a sub-tenant in actual occupation of the premises, also upon such sub-tenant. Such notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty days after the expiration of his term without any demand of possession or notice to quit by the landlord, or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of the landlord, or the successor in estate of his landlord, if any

there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of the tenant to hold for another year.

3. When he continues in possession, in person or by sub-tenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and three days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him, and if there be a sub-tenant in actual occupation of the premises, also upon such sub-tenant. Within three days after the service of the notice, the tenant or any sub-tenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease, or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; *Provided*, If the covenants and conditions of the lease, violated by the lessee, cannot afterward be performed, then no notice as last prescribed herein, need be given to said lessee or his sub-tenant demanding the performance of the violated covenant or conditions of the lease. A tenant may take proceedings similar to those prescribed in this Chapter, to obtain possession of the premises let to an under-tenant, in case of his unlawful detention of the premises underlet to him.

4. A tenant or sub-tenant, assigning or sub-letting, or committing waste upon the demised premises, contrary to the covenants of his lease, thereby terminates the lease, and the landlord, or his successor in estate, shall, upon service of three days' notice to quit, upon the person or persons in possession, be entitled to restitution of possession of such demised premises, under the provisions of this Chapter.

§ 3789. s 1036. The notices required by the preceding Service of notice. section may be served, either:

1. By delivering a copy to the tenant personally; or,
2. If he be absent from his place of residence, and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and

sending a copy through the mail addressed to the tenant at his place of residence; or,

3. If such place of residence and business cannot be ascertained, or a person of suitable age or discretion cannot be found there, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found, and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a sub-tenant may be made in the same manner.

Courts, have
jurisdiction.
March 11, 1888.

§ 3790. s 1037. The district court of the judicial district which embraces the property or some part of it, has jurisdiction of proceedings under this Chapter; *Provided*, That justices' courts within their respective precincts or cities shall have concurrent jurisdiction with the district courts in all cases of forcible entry, forcible detainer and unlawful detainer under this Chapter, when the whole amount of rent and damages claimed is less than three hundred dollars.

Parties de-
fendant.

§ 3791. s 1038. No person other than the tenant of the premises and sub-tenant, if there be one in the actual occupation of the premises, need be made parties defendant in the proceeding, nor shall any proceeding abate, nor the plaintiff be non-suited for the non-joinder of any persons who might have been made parties defendant; but when it appears that any of the parties served with process or appearing in the proceeding, are guilty of the offence charged, judgment must be rendered against him. In case a married woman be a tenant or a sub-tenant, her coverture shall constitute no defence, but in case her husband be not joined, or unless she be doing business as a sole trader, an execution issued upon a personal judgment against her can only be enforced against property on the premises at the commencement of the action.

Parties gen-
erally.

§ 3792. s 1039. Except as provided in the preceding section, the provisions of this Code, relating to parties to civil actions, are applicable to this proceeding.

The com-
plaint.

§ 3793. s 1040. The plaintiff, in his complaint, which shall be in writing, must set forth the facts on which he seeks to recover, and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer, and claim damages therefor. In case the unlawful detainer charged be

after default in the payment of rent, the complaint must state the amount of such rent. Upon filing the complaint, a summons must be issued thereon as in other cases, returnable at a day designated therein, which shall not be less than three days nor more than twelve days from its date, except in cases when the publication of the summons is necessary, in which case the court, or a judge or justice thereof, may order that the summons be made returnable at such time as may be deemed proper, and the summons shall specify the return day so fixed.

§ 3794. s 1041. The summons must state the parties to the proceeding, the court in which the same is brought, the nature of the action, in concise terms, and the relief sought and also the return day, and must notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him. The summons must be directed to the defendant, and be served at least two days before the return day designated therein, and must be served and returned in the same manner as summons in civil actions is served and returned. Upon the return of any summons issued under this Chapter, where the same has not, for any reason, been served, or not served in time, the plaintiff may have a new summons issued, the same as if no previous summons had been issued.

What summons must state

When new summons may issue.

§ 3795. s 1042. If the complaint presented establishes, to the satisfaction of the judge or justice, fraud, force, or violence, in the entry or detainer, and that the possession held is unlawful, he may make an order for the arrest of the defendant.

Arrest.

§ 3796. s 1043. If, at the time appointed, the defendant do not appear and defend, the court must enter his default and render judgment in favor of the plaintiff as prayed for in the complaint.

Judgment by default.

§ 3797. s 1044. On or before the day fixed for his appearance the defendant may appear and answer or demur.

Defendant may appear, etc.

§ 3798. s 1045. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending.

Trial by jury.

§ 3799. s 1046. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be

Showing re-
quired of
plaintiff, fore-
cible entry or de-
tainer.

Of defendant.

Complaint
must be
amended in
certain cases.

Verdict and
judgment.

required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer. The defendant may show in his defense, that he or his ancestors, or those whose interest in such premises he claims, have been in the quiet possession thereof for the space of one whole year together next before the commencement of the proceedings, and that his interest therein is not then ended or determined; and such showing is a bar to the proceedings.

§ 3800. s 1047. When, upon the trial of any proceeding under this Chapter it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible detainer, and other than the offence charged in the complaint, the judge must order that such complaint be forthwith amended to conform to such proofs. Such amendment must be without any imposition of terms. No continuance must be permitted upon account of such amendment, unless the defendant, by affidavit filed, shows to the satisfaction of the court, good cause therefor.

§ 3801. s 1048. If, upon the trial, the verdict of the jury, or if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises, and if the proceedings be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement. The jury or the court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint, and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent; and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for three times the amount of the damages thus assessed, and of the rent found due. When the proceeding is for an unlawful detainer after default in the payment of the rent, and the lease or agreement under which the rent is payable, has not by its

terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant, or any sub-tenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court, for the landlord, the amount found due as rent, with interest thereon, and the amount of damages found by the jury or the court for the unlawful detainer, and the costs of the proceeding, and thereupon the judgment shall be satisfied, and the tenant be restored to his estate; but, if payment, as here provided, be not made within the five days, the judgment may be enforced for its full amount, and for the possession of the premises. In all other cases the judgment may be enforced immediately.

§ 3802. s 1049. The complaint and answer must be verified. Verification of complaint and answer.

§ 3803. s 1050. An appeal taken by the defendant shall not stay proceedings upon the judgment, unless the judge or justice before whom the same was rendered so directs. Effect of an appeal upon the judgment.

§ 3804. s 1051. The provisions of this Code, relative to civil actions, appeals, and new trials, so far as they are not inconsistent with the provisions of this Chapter apply to the proceedings mentioned in this Chapter. Provisions applicable to proceedings under this Chapter.

TITLE IV.

ENFORCEMENT OF LIENS.

CHAPTER I.

DEFINITION OF LIENS.

SECTION.

3805 Lien defined.

Lien defined.

§ 3805. s 1056. A lien is a charge imposed upon specific property, by which it is made security for the performance of an act.

LIENS OF MECHANICS AND OTHERS UPON REAL PROPERTY.

SECTION.

3806 What laborers, contractors, etc., may have liens upon.

3807 Notice by sub-contractor, etc., and lien for an amount due contractor.

3808 Liens for grading, filling lots and streets.

3809 What interest in the land subject to the lien.

3810 Effect of liens.

3811 Claim of lien to be filed in recorder's office.

3812 Liens upon two or more pieces of property; amount due from each to be designated.

SECTION.

3813 Claim to be recorded; fees of recorder.

3814 Time of continuance of lien.

3815 Sub-contractor, when and where paid out of proceeds of sale.

3816 Measure of recovery by contractor; protection of owner's rights.

3817 Court to declare rank of liens.

3818 Separate actions may be consolidated; costs.

3819 Liens not to impair right to personal action.

3820 Provisions applicable to proceedings under this Chapter.

What laborers,
contractors,
etc., may have
liens upon.

§ 3806. s 1057. Every person performing labor upon or furnishing materials to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power, or any other structure, or who performs labor in any mining claim, has a lien upon

the same for the work or labor done or materials furnished by each respectively, whether done or furnished at the instance of the owner of the building or other improvement, or his agent, but the aggregate amount of such liens must not exceed the amount which the owner would be otherwise liable to pay.

§ 3807. s 1058. Any sub-contractor, material man, laborer or other person performing labor or furnishing materials for the contractor, who is entitled to a lien under the provisions of the last section, may, at any time within thirty days after commencing to perform the labor or furnish the materials, serve upon the owner or his agent, or the person employing the contractor, written notice of the amount due him, or contracted to become due him, for such labor or materials, and such sub-contractor, material man, laborer or other person may have a lien for such amount; and any person furnishing materials, or performing labor for the contractor may by like notice to the contractor, be subrogated to the rights of such sub-contractor; and by filing notice with the county recorder, shall likewise have a lien for the amount due him, although the building may not be finished; *Provided*, That he file notice of such lien within the time mentioned in section 1062 of this act.

Notice by sub-contractor, etc., and lien for an amount due contractor
March 11, 1886.

§ 3808. s 1059. Any person, who at the request of the owner of any lot in any incorporated city or town, grades, fills in, or otherwise improves the same, or the street in front of, or adjoining the same, has a lien upon such lot for his work done and materials furnished.

Lien for grading, filling lots and streets.

§ 3809. s 1060. The land upon which any building, improvement or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, is also subject to the liens, if, at the time the work was commenced or the materials for the same had commenced to be furnished, the land belonged to the person who caused said building improvement or structure to be constructed, altered or repaired; but if such person owned less than a fee simple estate in such land, then only his interest therein is subject to such lien.

What interest in the land subject to the lien.

§ 3810. s 1061. The liens provided for in this Chapter are preferred to any lien, mortgage or other incumbrance, which may have attached subsequent to the time when the building, improvement, or structure was commenced, work

Effect of liens

done, or materials were commenced to be furnished: also, to any lien, mortgage, or other incumbrance of which the lienholder had no notice and which was unrecorded at the time the building, improvement or structure was commenced, work done, or the materials were commenced to be furnished.

Claim of lien
to be filed in
recorder's
office.

§ 3811. s 1062. Every original contractor, within sixty days after the completion of his contract, and every person, save the original contractor, claiming the benefit of this Chapter, must within thirty days after the completion of any building, improvement, or structure, or after the completion of the alteration or repair thereof, or the performance of any labor in a mining claim, file for record with the county recorder of the county in which such property or some part thereof is situated, a claim containing a statement of his demand, after deducting all just credits and offsets, with the name of the owner, or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the material, with a statement of the terms, time given, and conditions of his contract, and also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of himself or some other person.

Lien upon
two or more
pieces of prop-
erty.

§ 3812. s 1063. In every case in which one claim is filed against two or more buildings, mining claims, or other improvements owned by the same person, the person filing such claim must at the same time designate the amount due to him on each of such buildings, mining claims or other improvements, otherwise the lien of such claim is postponed to other liens. The lien of such claimant does not extend beyond the amount designated, as against other creditors having liens, by judgment, mortgage, or otherwise, upon either of such buildings or other improvements, or upon the land upon which the same are situated.

Amount due
from each to
be designated.

Claim to be re-
corded.

§ 3813. s 1064. The recorder must record the claim in a book kept by him for that purpose, which record must be indexed as deeds, and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other instruments.

Fees of re-
corder.

Time of con-
tinuance of
liens.

§ 3814. s 1065. No lien provided for in this Chapter binds any building, mining claim, improvement or structure for a longer period than ninety days after the same has been

filed unless proceedings be commenced in a proper court within that time to enforce the same, or, if a credit be given, then ninety days after the expiration of such credit, but no lien continues in force for a longer time than two years from the time work is completed, by any agreement to give credit.

§ 3815. s 1066. All persons entitled to liens on the structure or improvement, except those who contracted with the owner thereof, are sub-contractors, and the court in the judgment must direct the amount due sub-contractors to be paid out of the proceeds of sales, before any part of such proceeds are paid to the contractor.

Sub-contractors, where and when paid out of proceeds of sale.

§ 3816. s 1067. The contractor shall be entitled to recover upon a lien filed by him, only such amount as may be due to him according the terms of his contract, after deducting all claims of other parties for work done and materials furnished, as aforesaid; and in all cases where a lien shall be filed, under this Chapter, for work done or materials furnished to any contractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which the lien is filed; and in case of judgment against the owner or his property, upon the lien, the said owner shall be entitled to deduct from any amount due, or to become due by him to the contractor, the amount of such judgment and costs.

Measure of recovery by contractor; protection of owner's rights.

§ 3817. s 1068. In every case in which different liens are asserted against any property, the court in the judgment must declare the rank of each lien, or class of liens, which shall be in the following order, viz: First—All persons other than the original contractors and sub-contractors; Second—The sub-contractors; Third—The original contractors. And the proceeds of the sale of the property must be applied to each lien, or class of liens, in the order of its rank, and whenever, on the sale of the property subject to the lien, there is a deficiency of proceeds, judgment may be docketed for the deficiency in like manner and with like effect as in actions for the foreclosure of mortgages.

Court to declare rank of liens.

§ 3818. s 1069. Any number of persons claiming liens may join or intervene in the same actions, and when separate actions are commenced, the court may consolidate them. The court may also allow, as part of the costs, the moneys paid for filing and recording the lien.

Separate actions may be consolidated. Costs.

Even not to
impair right to
personal ac-
tion.

§ 3819. s 1070. Nothing contained in this Chapter shall be construed to impair or affect the right of any person to whom any debt may be due for work done, or materials furnished, to maintain a personal action to recover such debt against the person liable therefor.

Provisions ap-
plicable to pro-
ceedings
under this
Chapter.

§ 3820. s 1071. Except as otherwise provided in this Chapter, the provisions of this Code relating to civil actions, new trials and appeals, are applicable to, and constitute the rules of practice in the proceedings mentioned in this Chapter.

TITLE V.

OF CONTEMPT.

SECTION.

- 3821 What acts or omissions are con-
tempts.
3822 Re-entry on property after evec-
tion, when a contempt.
3823 A contempt committed in the
presence of the court, may be
punished summarily; when not
so committed, affidavit or state-
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3824 A warrant of attachment may
issue or a notice to show cause.
3825 Bail may be given by a person
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3826 Officer must upon executing the
warrant, arrest and detain the
person until discharged.

SECTION.

- 3827 Bail bond, form and condition of.
3828 Officer must return warrant and
undertaking, if any.
3829 Hearing.
3830 Judgment and penalty if guilty.
3831 If the contempt is omission to
perform any act, the person
may be imprisoned until per-
formance.
3832 If a party fail to appear, pro-
ceedings.
3833 Illness sufficient cause for non-
appearance of party arrested.

What acts or
omissions are
contempts.

§ 3821. s 1076. The following acts or omissions, in respect to a court of justice or proceedings therein, are contempts of authority of the court:

1. Disorderly, contemptuous or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding.
2. Breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding.

3. Misbehavior in office, or other wilful neglect or violation of duty by an attorney, counsel, clerk, marshal, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service.

4. Deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding.

5. Disobedience of any lawful judgment, order or process of the court.

6. Assuming to be an officer, attorney, counsel of a court and acting as such without authority.

7. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court.

8. Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial.

9. Any other unlawful interference with the process or proceedings of a court.

10. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

11. When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such court, or with any other person in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

12. Disobedience, by an inferior tribunal, magistrate, or officer, of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer.

§ 3822, s 1077. Every person dispossessed or ejected from or out of any real property, by the judgment or process of any court of competent jurisdiction, and who, not having a right so to do, re-enters into or upon, or takes possession of any such real property, or induces or procures any person not having a right so to do, or aids or abets him therein, is guilty of a contempt of the court by which such judgment was rendered, or from which such process issued.

Re-entr; on
property
after eviction,
when a con-
tempt.

Upon a conviction for such contempt, the court or justice of the peace must immediately issue an alias process directed to the proper officer and requiring him to restore the party entitled to the possession of such property under the original judgment or process to such possession.

A contempt committed in the presence of the court may be punished summarily.

§ 3823. s 1078. When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily, for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as in section 1085 of this Code prescribed. When the contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit shall be presented to the court, or judge, of the facts constituting the contempt or a statement of the facts by the referees or arbitrators or other judicial officer.

When not so committed affidavit or statement shall be made.

A warrant of attachment may issue, or a notice to show cause.

§ 3824. s 1079. When the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer, or, without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment can be issued without such previous attachment to answer, or such notice or order to show cause.

Bail may be given by person arrested under such warrant.

§ 3825. s 1080. Whenever a warrant of attachment is issued pursuant to this Chapter, the court or judge, must direct by an indorsement on such warrant, that the person charged may be let to bail for his appearance, in an amount to be specified in such indorsement.

Officer must upon executing the warrant arrest and detain the person until discharged.

§ 3826. s 1081. Upon executing the warrant of attachment, the officer must keep the person in custody, bring him before the court or judge, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

Bail bond, form and conditions of.

§ 3827. s 1082. When a direction to let the person arrested to bail is contained in the warrant of attachment, or indorsed thereon, he must be discharged from the arrest, upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant, and abide the order of

the court or judge thereupon; or they will pay, as may be directed, the sum specified in the warrant.

§ 3828. s 1083. The officer must return the warrant of arrest and undertaking, if any, received by him from the person arrested, by the return day specified therein. Officer must return warrant and undertaking, if any.

§ 3829. s 1084. When the person arrested has been brought up, or has appeared, the court or judge must proceed to investigate the charge, and must hear any answer which the person arrested may make to the same, and may examine witnesses for or against him; for which an adjournment may be had from time to time, if necessary. Hearing.

§ 3830. s 1085. Upon the answer and evidence taken, the court, or judge, must determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding two hundred dollars, or he may be imprisoned not exceeding five days, or both. Judgment and penalty if guilty.

§ 3831. s 1086. When the contempt consists in the omission to perform an act enjoined by law, which is yet in the power of the person to perform, he may be imprisoned until he have performed it, or until released by the court, and, in that case, the act must be specified in the warrant of commitment. If the contempt is omission to perform any act, the person may be imprisoned until performance.

§ 3832. s 1087. When the warrant of arrest has been returned served, if the person arrested do not appear on the return day, the court, or judge, may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued, and the costs of the proceeding. If a party fail to appear, proceedings.

§ 3833. s 1088. Whenever, by the provisions of this Chapter, an officer is required to keep a person arrested, on a warrant of attachment, in custody, and to bring him before a court, or judge, the inability, from illness or otherwise, of the person to attend, is a sufficient excuse for not bringing him up; and the officer must not confine a person arrested upon the warrant, in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance. Illness sufficient cause for non-appearance of party arrested.

TITLE VI.

VOLUNTARY DISSOLUTION OF CORPORATIONS.

SECTION.

3834 How dissolved.

3835 Application, what to contain.

3836 Application, how signed and verified.

SECTION.

3837 Filing application and publication of notice.

3838 Objections may be filed.

3839 Hearing of application.

3340 Judgment roll and appeal.

How dissolved

§ 3834. s 1094. A corporation may be dissolved by the district court of the district where its office or principal place of business is situated, upon its voluntary application for that purpose.

Application,
what to con-
tain.

§ 3835. s 1095. The application must be in writing, and must set forth:

1. That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a two-third vote of all the stockholders or members.

2. That all the claims and demands against the corporation have been satisfied and discharged.

Application,
how signed
and verified.

§ 3836. s 1096. The application must be signed by a majority of the board of trustees, directors, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

Filing applica-
tion and publi-
cation of no-
tice.

§ 3837. s 1097. If the judge is satisfied that the application is in conformity with this Chapter he must order it to be filed with the clerk, and that the clerk give not less than thirty days' notice of the application, by publication in some newspaper published in the district, and if there are none such, then by advertisements, posted up in three of the principal public places in the county where its office or principal place of business is situated.

Objections
may be filed.

§ 3838. s 1098. At any time before the expiration of the time of publication, any person may file his objections to the application.

§ 3839. s 1099. After the time of publication has expired, the court may, upon five days' notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application; and if all the statements therein made are shown to be true, he must declare the corporation dissolved.

§ 3840. s 1100. The application, notices, and proof of publication, objections, if any, and declaration of dissolution, constitute the judgment roll, and from the judgment an appeal may be taken as from judgments in other civil actions.

TITLE VII.

OF EMINENT DOMAIN.

SECTION.	SECTION.
3841 Eminent domain may be exercised.	3851 Court or jury to assess damages.
3842 Estates and rights subject to condemnation.	3852 The date with respect to which compensation shall be assessed and the measure thereof.
3843 Private property defined.	3853 New proceedings to cure defective title.
3844 Facts necessary to be found by court before condemnation.	3854 Payment of damages or deposit of bond therefor.
3845 Parties may make location; may enter to make surveys.	3855 Damages, to whom paid.
3846 Jurisdiction in district courts.	3856 Final order of condemnation, what to contain; when filed, title vests.
3847 The complaint and its contents.	3857 Putting plaintiff in possession.
3848 Summons and what to contain; how issued and served.	3858 Costs may be allowed; distribution thereof.
3849 Who may defend; what its answer may show.	3859 Provisions of Code applicable to proceedings under this Chapter.
3850 Court shall have jurisdiction to regulate the mode of making crossings or of enjoying a common use.	3860 Exceptions.

§ 3841. s 1105. Subject to the provisions of this Chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. Public buildings and grounds for the use of the Territory, and all other public uses authorized by the Legislature.

Feb'y. 21, 1886.

2. Public buildings and grounds for the use of any county, incorporated city, village, town or school district, reservoirs, canals, aqueducts, flumes, ditches or pipes for conducting water for the use of the inhabitants of any county, incorporated city, village or town: or for draining any county, incorporated city, village or town: raising the banks of streams, removing obstructions therefrom, and widening, deepening or straightening their channels: roads, streets and alleys, and all other public uses for the benefit of any county, incorporated city, village or town, or the inhabitants thereof.

Feb'y. 21, 1888.

3. Wharves, docks, piers, chutes, booms, ferries, bridges, toll-roads, by-roads, plank and turnpike roads, steam and horse railroads, reservoirs, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for floating logs and lumber on streams not navigable. (1)

4. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines: also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines: also an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit or conduct of tailings or refuse matter from their several mines.

5. By-roads leading from highways to residences and farms.

6. Telegraph lines.

7. Sewerage of any incorporated city.

Estates and
rights subject
to condemnation.

§ 3842. s 1106. The following is a classification of the estates and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams, and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine.

2. An easement, when taken for any other use.

3. The right of entry upon and occupation of lands, and the right to take therefrom such earth, gravel, stones, trees and timber as may be necessary for some public use.

§ 3843. s 1107. The private property which may be Private property defined. taken under this Chapter includes:

1. All real property belonging to any person.

2. Lands belonging to this Territory, or to any county, incorporated city, village or town, not appropriated to some public use.

3. Property appropriated to public use; but such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated.

4. Franchises for toll-roads, toll-bridges and ferries, and all other franchises; but such franchise shall not be taken unless for free highways, railroads, or other more necessary public use.

5. All rights of way for any and all purposes mentioned in section 1105, and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed, or intersected by any other right of way or improvements or structures thereon. They shall also be subject to a limited use in common with the owner thereof, when necessary; but such uses of crossings, intersections and connections, shall be made in manner most compatible with the greatest public benefit and least private injury.

6. All classes of private property not enumerated, may be taken for public use, when such taking is authorized by law.

§ 3844. s 1108. Before property can be taken it must Facts necessary to be found by court before condemnation. appear:

1. That the use to which it is to be applied is a use authorized by law.

2. That the taking is necessary to such use.

3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

§ 3845. s 1109. In all cases where land is required for public use, the Territory or its agents in charge of such use, may survey and locate the same; but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of this Chapter. The Territory or its agents in charge of such public use, may enter upon the land and make examinations, surveys, and maps thereof, and such entry Parties may make location. May enter to make surveys.

shall constitute no cause of action in favor of the owners of the lands, except for injuries resulting from negligence, wantonness, or malice.

Jurisdiction in district courts

§ 3846. s 1110. All proceedings under this Chapter must be brought in the district court for the district in which the property is situated. They must be commenced by filing a complaint and issuing a summons thereon.

The complaint and its contents.

§ 3847. s 1111. The complaint must contain:

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.

2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

3. A statement of the right of the plaintiff.

4. If a right of way be sought, the complaint must show the location, general route and termini, and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding.

5. A description of each piece of land sought to be taken, and whether the same includes the whole or only part of an entire parcel or tract. All parcels lying in the same judicial district and required for the same public use, may be included in the same or separate proceedings at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties.

Summons, what to contain.

§ 3848. s 1112. The clerk must issue a summons, which must contain the names of the parties, a general description of the whole property, a statement of the public use for which it is sought, and a reference to the complaint for descriptions of the respective parcels, and a notice to the defendants to appear and show cause why the property described should not be condemned as prayed for in the complaint. In all other particulars it must be in the form of a summons in civil actions and must be served in like manner.

How issued and served.

Who may defend.

§ 3849. s 1113. All persons in occupation of, or having or claiming an interest in any of the property described in the complaint, or in the damages for the taking thereof, though not named, may appear, plead and defend, each in respect to his own property or interest, or that claimed by him, in like manner as if named in the complaint.

What the answer may show.

§ 3850. s 1114. The court or judge thereof shall have Court shall have jurisdiction to regulate the mode of making crossings, or of enjoying a common use.
power:

1. To determine the conditions specified in section 1108 and regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in the fifth subdivision of section 1107.

2. To hear and determine all adverse or conflicting claims to the property sought to be condemned, and to the damages therefor.

3. To determine the respective rights of different parties seeking condemnation of the same property.

§ 3851. s 1115. The court, jury, or referee must hear Court or jury to assess damages.
such legal testimony as may be offered by any of the parties to the proceedings, and thereupon must ascertain and assess:

1. The value of the property sought to be condemned, and all improvements thereon pertaining to the realty, and of each and every separate estate or interest therein: if it consists of different parcels, the value of each parcel and each estate or interest therein shall be separately assessed.

2. If the property sought to be condemned constitutes only a part of a large parcel, the damages which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff.

3. Separately how much the portion not sought to be condemned, and each estate or interest therein, will be benefited, if at all, by the construction of the improvement proposed by the plaintiff; and if the benefit shall be equal to the damages assessed, under subdivision 2, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value.

4. If the property sought to be condemned be for a railroad the cost of good and sufficient fences along the line of such railroad between such railroad, and other adjoining lands of the defendant.

5. As far as practicable, compensation must be assessed for each source of damages separately.

§ 3852. s 1116. For the purpose of assessing compensa-

The date with respect to which compensation shall be assessed and the measure thereof.

ation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where such damages are allowed, as provided in the last section. No improvements put upon the property subsequent to the date of the service of summons, shall be included in the assessment of compensation or damages.

New proceedings to cure defective title.

§ 3853. s 1117. If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same as in this Chapter prescribed.

Payment of damages, or deposit of bond therefor.

§ 3854. s 1118. The plaintiff must, within thirty days after final judgment, pay the sum of money assessed in respect to the land taken and also execute to the defendant a bond, with sureties to be approved by the court, or judge thereof, in double the assessed cost of constructing good and sufficient fences as provided in subdivision 4, of section 1115, conditioned that the plaintiff shall build such fence within twelve months from the time the railroad is built on or over the land taken, and the defendant or his grantees, in case of a breach of the conditions of said bond, may have an action thereon, and recover all damages sustained and the cost of constructing such fences, and when collected such damages and costs shall be paid into court, and that portion consisting of the estimated cost of fencing must be applied to that purpose under the direction of the court.

Damages, to whom paid.

§ 3855. s 1119. Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants, and be distributed to those entitled thereto. If the money be not so paid or deposited, the defendants may have execution as in civil cases; and if the money cannot be made on execution, the court upon a showing to that effect, must set aside and annul the entire proceedings, and restore possession of the property to the defendant if possession has been taken by the plaintiff.

Final order of condemnation, what to contain.

§ 3856. s 1120. When payments have been made and the bond given, if the plaintiff elects to give one, as required by the last two sections, the court must make a final order of condemnation, which must describe the property condemned and the purpose of such condemnation. A copy of the order

must be filed in the office of the recorder of the county, and thereupon the property described therein shall vest in the plaintiff for the purpose therein specified.

§ 3857. s 1121. At any time after trial and judgment entered, or pending an appeal from the judgment to the supreme court, whenever the plaintiff shall have paid into court for the defendant, the full amount of the judgment, and such further sum as may be required by the court as a fund to pay any further damages and costs that may be recovered in said proceedings, as well as all damages that may be sustained by the defendant if for any cause the property shall not be finally taken for public use, the district court in which the proceeding was tried may, upon notice of not less than ten days, authorize the plaintiff, if already in possession, to continue therein, and if not, then to take possession of and use the property during the pendency of and until the final conclusion of the litigation, and may, if necessary, stay all actions and proceedings against the plaintiff on account thereof. The defendant, who is entitled to the money paid into court for him upon any judgment, shall be entitled to demand and receive the same at any time thereafter upon obtaining an order therefor from the court. It shall be the duty of the court, or a judge thereof, upon application being made by such defendant, to order and direct that the money so paid into court for him be delivered to him upon his filing a satisfaction of the judgment, or upon his filing a receipt therefor, and an abandonment of all defenses to the action or proceeding, except as to the amount of damages that he may be entitled to in the event that a new trial shall be granted. A payment to a defendant, as aforesaid, shall be held to be an abandonment by such defendant of all defenses interposed by him, excepting his claim for greater compensation.

§ 3858. s 1122. Costs may be allowed or not, and if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court.

§ 3859. s 1123. Except as otherwise provided in this Chapter, the provisions of this Code relative to civil actions and new trials and appeal, are applicable to and constitute the rules of practice in the proceedings in this Chapter.

§ 3860. s 1124. Nothing in this Code must be construed to abrogate or repeal any statute providing for the taking of property in any city or town for street purposes.

When filed,
title vests.

Putting plain-
tiff in posses-
sion.

Costs may be
allowed; dis-
tribution
thereof.

Provisions
of Code
applicable to
proceedings
under this
Chapter.

Exceptions.

TITLE VIII.

OF CHANGE OF NAMES.

SECTION.

3861 Jurisdiction.

3862 Application for change of name, how made; corporation, change of name.

SECTION.

3863 Publication of petition for.

3864 Hearing of application and remonstrance.

Jurisdiction.

§ 3861. s 1128. Applications for change of names must be heard and determined by the district courts.

Application for change of name, how made.

§ 3862. s 1129. All applications for change of names must be made to the district court of the judicial district where the person whose name is proposed to be changed resides, by petition, signed by such person: and if such person is under twenty-one years of age, by one of the parents, if living; or if both be dead, then by the guardian: and if there be no guardian, then by some near relation or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name, and must, if the father of such person be not living, name as far as known to the petitioner, the near relatives of such person, and their place of residence.

Corporation, change of name of.

Any religious, benevolent, literary or scientific corporation, or any corporation bearing or having for its name or using or being known by the name of any benevolent or charitable order, or society, may, by petition, apply to the district court of the judicial district in which the property of said corporation is situated, for a change of its corporate name. Such petition must be signed by the trustees of the corporation, or by a majority of them, and must specify the date of the formation of the corporation, its present name, the name proposed, and the reason for such change of name. Upon filing such petition on behalf of such corporation, the same proceedings must be had as upon application for changes of name of natural persons.

Publication of petition for.

§ 3863. s 1130. A copy of such petition must be published for four successive weeks, in some newspaper printed

in the judicial district, if a newspaper be printed therein, but if no newspaper be printed in the judicial district, a copy of such petition must be posted for a like period at three of the most public places in the county in which the property of such corporation is situated, or in which the petitioner resides, if the petition is for the change of the name of a natural person, and proofs must be made of such publication or posting before the petition can be considered.

§ 3864. s 1131. Such application must be heard at such time during the term as the court may appoint, and objections may be filed by any person who can, in such objections show to the court good reasons against such change of name. On the hearing the court may examine upon oath, any of the petitioners, remonstrants, or other persons, touching the application, and may make an order changing the name or dismissing the application, as to the court may seem right and proper.

Hearing of application and remonstrance.

TITLE IX.

OF ARBITRATION.

SECTION.

SECTION.

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|------|---|------|--|
| 3865 | What may be submitted to arbitration and when. | 3870 | Award to be in writing; when judgment must be entered. |
| 3866 | Submission to arbitration to be in writing. | 3871 | Award may be vacated in certain cases. |
| 3867 | Submission may be entered as an order of the court; revocation. | 3872 | Court may on motion modify or correct the award. |
| 3868 | Powers of arbitrators. | 3873 | Decisions on motion subject to appeal, but not the judgment entered before motion. |
| 3869 | Majority of arbitrators may determine any question; they must be sworn. | 3874 | If submission be revoked and an action brought, what to be recovered. |

§ 3865. s 1135. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification does not include questions relating merely to the partition or boundaries of real property.

What may be submitted to arbitration and when.

Submission to arbitration to be in writing. § 3866. s 1136. The submission to arbitration must be in writing and may be to one or more persons.

Submission may be entered as an order of the court. § 3867. s 1137. It may be stipulated in the submission that it be entered as an order of the court, for which purpose it must be filed with the clerk of the court where the parties, or one of them, reside. The clerk must thereupon enter in his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of submission, when filed, and the time limited by the submission, if any, within which the award must be made. When so entered, the submission cannot be revoked without the consent of both parties. The arbitrators may be compelled by the court to make an award, and the award may be enforced by the court in the same manner as a judgment. If the submission is not made an order of the court, it may be revoked at any time before the award is made.

Revocation. Powers of arbitrators. § 3868. s 1138. Arbitrators have power to appoint a time and place for hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties, and to make an award thereon.

Majority of arbitrators may determine any question. They must be sworn. § 3869. s 1139. All the arbitrators must meet and act together during the investigation, but when met, a majority may determine any question. Before acting they must be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matters in controversy, and to make a just award according to their understanding.

Award to be in writing. When judgment must be entered. § 3870. s 1140. The award must be in writing, signed by the arbitrators or a majority of them, and delivered to the parties. When the submission is made an order of the court, the award must be filed with the clerk and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit showing that notice of filing the award has been served on the adverse party or his attorney, at least four days prior to such application, and that no order staying the entry of judgment has been served, the award must be entered by the clerk in the judgment book, and thereupon has the effect of a judgment.

§ 3871. s 1141. The court, on motion, may vacate the award upon any of the following grounds, and may order a

new hearing, before the same arbitrators, or not, in its discretion: Award may be vacated in certain cases.

1. That it was procured by corruption or fraud.

2. That the arbitrators were guilty of misconduct or committed gross error in refusing on cause shown, to postpone the hearing, or in refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced.

3. That the arbitrators exceeded their powers in making their award: or that they refused, or improperly omitted to consider a part of the matters submitted to them; or that the award is indefinite or cannot be performed.

§ 3872. s 1142. The court may, on motion, modify or correct the award when it appears: Court may, on motion, modify or correct the award.

1. That there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein.

2. When a part of the award is upon matters not submitted, which part can be separated from other parts and does not affect the decision on the matter submitted.

3. When the award, though imperfect in form, could have been amended if it had been a verdict, or the imperfection disregarded.

§ 3873. s 1143. The decision upon either motion is subject to appeal in the same manner as an order which is subject to appeal in a civil action; but the judgment, if entered before a motion is made, cannot be subject to appeal. Decision on motion, subject to appeal, but not the judgment entered before motion

§ 3874. s 1144. If a submission to arbitration be revoked, and an action be brought therefor, the amount to be recovered can only be the costs and the damages sustained in preparing for and attending the arbitration. If submission be revoked and an action brought, what to be recovered.

TITLE X.

CHAPTER I.

EVIDENCE, JUDICIAL KNOWLEDGE.

SECTION.

3875 Certain facts of general notoriety assumed to be true; specification of such facts.

Certain facts of general notoriety as assumed to be true. Specification of such facts

§ 3875. s 1149. Courts take judicial notice of the following facts:

1. The true signification of all English words and phrases, and of all legal expressions.

2. Whatever is established by law.

3. Public and private official acts of the legislative, executive and judicial department of this Territory and of the United States.

4. The seals of all the courts of this Territory and of the United States.

5. The accession to office and the official signatures and seals of office of the principal officers of government in the legislative, executive and judicial departments of this Territory and of the United States.

6. The existence, title, national flag and seal of every State or sovereign recognized by the executive power of the United States.

7. The seals of courts of admiralty and maritime jurisdiction, and of notaries public.

8. The laws of nature, the measure of time, and the geographical divisions and political history of the world.

In all these cases the court may resort for its aid to appropriate books or documents of reference.

CHAPTER II.

WITNESSES.

SECTION.

3876 All persons capable of perception and communication may be witnesses.
 3877 Persons who cannot be witnesses.

SECTION.

3878 Persons in certain relations to parties prohibited.
 3879 Judge or a juror may be witnesses.
 3880 When an interpreter to be sworn.

§ 3876. s 1154. All persons, without exception, otherwise than is specified in the next two sections, who, having organs of sense, can perceive, and, perceiving, can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceeding are excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although in every case the credibility of the witness may be drawn in question, by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty, or integrity, or his motives, or by contradictory evidence; and the jury are the exclusive judges of his credibility.

All persons capable of perception and communication may be witnesses.

§ 3877. s 1155. The following persons cannot be witnesses:

Persons who cannot be witnesses.

1. Those who are of unsound mind at the time of their production for examination.

2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

3. Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted, against an executor or administrator upon a claim or demand against the estate of a deceased person, as to any matter of fact occurring before the death of such deceased person, and equally within the knowledge of both the witness and the deceased person.

§ 3878. s 1156. There are particular relations in which it is the policy of the law to encourage confidence and to

Persons in cer-
tain relations
to parties pro-
hibited.

preserve it inviolate, therefore a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given therein, in the course of professional employment.

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

4. A physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient.

5. A public officer cannot be examined as to communications made to him in official confidence when the public interests would suffer by the disclosure.

Judge or a
juror may be
witnesses.

§ 3879. s 1157. The judge himself or any juror may be called as a witness by either party; but in such case it is in the discretion of the court to order the trial to be postponed or suspended, and to take place before another judge or jury.

When an inter-
preter to be
sworn.

§ 3880. s 1158. When a witness does not understand and speak the English language, an interpreter must be shown [sworn] to interpret for him. Any person may be summoned by any court or judge to appear before such court or judge to act as interpreter in any action or proceeding. The summons must be served and returned in like manner as a subpoena. Any person so summoned who fails to attend at the time and place named in the summons is guilty of a contempt.

CHAPTER III.

PUBLIC WRITINGS.

SECTION.	SECTION.
3881 Every citizen entitled to inspect and copy public writings.	3891 Record of foreign country, how authenticated.
3882 Public officers bound to give copies.	3892 Other evidence of a foreign record.
3883 Public and private statutes defined.	3893 Manner of proving other official documents.
3884 Four kinds of public writings.	3894 Public record of private writing evidence.
3885 Books containing laws presumed to be correct.	3895 Entries in official books, evidence.
3886 Certified copy on law or public writing.	3896 Justice's judgment, how proved.
3887 Other evidence of laws of other States and Territories.	3897 Same.
3888 Recitals in statutes, how far evidence.	3898 Official certificates, contents of.
3889 Judicial record defined.	3899 Certificates of purchase, primary evidence of ownership.
3890 Record, how authenticated as evidence.	3900 Entries made by officers and board <i>prima facie</i> evidence.

§ 3881. s 1163. Every citizen has a right to inspect and take a copy of any public writing of this Territory, except as otherwise expressly provided by statute. Every citizen entitled to inspect and copy public writing.

§ 3882. s 1164. Every public officer having the custody of a public writing, which a citizen has the right to inspect, is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor. Public officers bound to give copies.

§ 3883. s 1165. Statutes are public or private. A private statute is one which concerns only certain designated individuals, and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations. A public and private statutes defined.

§ 3884. s 1166. Public writings are divided into four classes: Four kinds of public writings.

1. Laws.
2. Judicial records.
3. Other official documents.
4. Public records kept in this Territory, of private writings.

Books containing laws presumed to be correct.
Feb'y. 16, 1888.

§ 3885. s 1167. Books purporting to be printed or published under the authority of a State, Territory or foreign country, and to contain the statutes, code, or other written law of said State, Territory, or country, or proved to be commonly admitted in the tribunals of such State, Territory or country as evidence of the written law thereof, are admissible in this Territory as evidence of such law. (1)

Certified copy of law or public writing.
Feb'y. 16, 1888.

§ 3886. s 1168. A copy of the written law or other public writing of any State, Territory or foreign country, attested by the certificate of the officer having charge of the original under the public seal of the State, Territory or country or, attested by the certificate of the keeper thereof and the seal of his office annexed, if there be a seal, together with the certificate of the presiding justice of the country, parish or district, in which such office may be kept, or of the Governor, secretary of State, or chancellor, or, if of a foreign country, the certificate of the minister or ambassador, or a consul, vice-consul, or consular agent of the United States in such foreign country, that the attestation of such keeper is in due form and by the proper officer, is admissible as evidence of such law or writing. (2)

Other evidence of laws of other States and Territories.

§ 3887. s 1169. The oral testimony of witnesses skilled therein is admissible as evidence of the unwritten law of a State, other Territory, or foreign country, as are also printed and published books of reports of decisions of the courts of such State, Territory or country, commonly admitted in such courts.

Recitals in statutes, how far evidence.

§ 3888. s 1170. The recitals in a public statute are conclusive evidence of the fact recited, for the purpose of carrying it into effect, but no further. The recitals in a private statute are conclusive evidence between parties who claim under its provisions, but no further.

Judicial record defined.

§ 3889. s 1171. A judicial record is the record or official entry of the proceedings in a court of justice, or of the official act of a judicial officer, in an action or special proceeding.

Record, how authenticated as evidence.

§ 3890. s 1172. A judicial record of this Territory, or of the United States, may be proved by the production of the original, or by a copy thereof certified by the clerk or other person having the legal custody thereof. That of a State or

other Territory may be proved by the attestation of the clerk and the seal of the court annexed, if there be a clerk and seal, together with a certificate of the chief judge or presiding magistrate, that the attestation is in due form.

§ 3891. s 1173. A judicial record of a foreign country may be proved by the attestation of the clerk, with the seal of the court annexed, if there be a clerk and seal, or of the keeper of the record, with the seal of his office annexed if there be a seal, together with a certificate of the chief judge or presiding magistrate, or minister, or ambassador, or a consul, vice-consul, or consular agent of the United States, in such foreign country, that the attestation is in due form and by the proper officer. (1).

Record of
foreign
country, how
authenticated.
Feb'y. 16, 1888

§ 3892. s 1174. A copy of the judicial record of a foreign country is also admissible in evidence upon proof:

Other evi-
dence of a
foreign record.

1. That the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it.

2. That such original was in the custody of the clerk of the court, or other legal keeper of the same; and,

3. That the copy is duly attested by a seal which is proved to be the seal of the court where the record remains, if it be the record of a court; or if there be no such seal, or if it be not a record of a court, by the signature of the legal keeper of the original.

§ 3893. s 1175. Other official documents may be proved as follows:

Manner of
proving other
official docu-
ments.

1. Acts of the executive of this Territory, by the records, and of the United States, by the records of the departments of the United States certified by the heads of those departments respectively. They may also be proved by public documents, printed by the order of the legislature or Congress, or either house thereof.

2. The proceedings of the legislature of this Territory or of Congress, by the journals of those bodies respectively, or either house thereof, or by published statutes or resolutions, or by copies certified by the clerk, or printed by their order.

3. The acts of the executive or the proceedings of the legislature of a State or other Territory in the same manner.

4. The acts of the executive, or the proceedings of the legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public act of the executive of the United States.

5. Acts of a municipal corporation of this Territory or of a board or department thereof, by a copy, certified by the legal keeper thereof, or by a printed book published by the authority of such corporation.

6. Documents of any other class in this Territory by the original, or by a copy, certified by the legal keeper thereof.

7. Documents of any other class in a State or Territory, by the original, or by a copy, certified by the legal keeper thereof, together with the certificate of the secretary of state, judge of the supreme, superior, circuit, district, or county court, or mayor of a city of such State or Territory, that the copy is duly certified by the officer having the legal custody of the original.

March 3, 1888.

8. Documents of any other class in a foreign country by the original, or by a copy, certified by the legal keeper thereof, with a certificate under the seal of the country or sovereign, or with a certificate of the minister or ambassador, or a consul, vice-consul or consular agent of the United States in such foreign country, that the document is a valid and subsisting document of such country and that the copy is duly certified by the officer having the legal custody of the original.

Public record
of private writ-
ing, evidence.

§ 3894. s 1176. A public record of a private writing may be proved by the original record or by a copy thereof, certified by the legal keeper of the record.

Entries in
official books,
evidence.

§ 3895. s 1177. Entries in public or other official books or records, made in the performance of his duty by a public officer of this Territory or by any other person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts stated therein.

Justice's judg-
ment, how
proved.

§ 3896. s 1178. A transcript from the record or docket of a justice of the peace of a State or other Territory, of a judgment rendered by him of the proceedings in the action before the judgment of the execution and return, if any, subscribed by the justice and verified in the manner prescribed in

the next section, is admissible evidence of the facts stated therein.

§ 3897. s 1179. There must be attached to the trans-^{same.}cript a certificate of the justice that the transcript is in all respects correct, and that he had jurisdiction of the action, and also a further certificate of the clerk or prothonotary of the county in which the justice is a resident at the time of rendering the judgment under the seal of the county, or the seal of the court of common pleas or county court or court of general jurisdiction thereof, certifying that the person subscribing the transcript was, at the date of the judgment, a justice of the peace in the county, and that the signature is genuine. Such judgment, proceedings, and jurisdiction may also be proved by the justice himself, on the production of his docket, or by a copy of the judgment, and his oral examination as a witness.

§ 3898. s 1180. Whenever a copy of a writing is certi-^{Official certifi-}fied for the purpose of evidence, the certificate must state in^{cates contents} substance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be; the certificate must be under the official seal of the certifying officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

§ 3899. s 1181. A certificate of purchase, or of location^{Certificates of} of any lands in this Territory, issued or made in pursuance of^{purchase, pri-} any law of the United States, is primary evidence that the^{mary evidence} holder or assignee of such certificate is the owner of the land^{of ownership.} described therein; but this evidence may be overcome by proof that, at the time of the location, or time of filing a pre-emption claim on which the certificate may have been issued, the land was in the adverse possession of the adverse party, or those under whom he claims, or that the adverse party is holding the land for mining purposes.

§ 3900. s 1182. An entry made by an officer, or board of^{Entries made} officers, or under the direction and in the presence of either,^{by officers and} in the course of official duty, is *prima facie* evidence of the^{board *prima*} facts stated in such entry.^{*facie* evidence.}

CHAPTER IV.

PRIVATE WRITINGS.

SECTION.	SECTION.
3901 Private writings, sealed or unsealed.	3908 Other witnesses may also testify.
3902 Seal defined.	3909 When evidence of execution not necessary.
3903 Public and private seals, how made; scroll or sign.	3910 Entries of decedents, evidence in specified cases.
3904 Books, maps, etc., how far evidence.	3911 Private writings, acknowledged and certified.
3905 When in possession of adverse party, notice to be given.	3912 Certified copies, or copies of record, admissible without further proof.
3906 Writings called for and inspected may be withheld.	3913 Contents of writing, how proved.
3907 Writing, how may be proved.	

Private writings, sealed or unsealed.

§ 3901. s 1187. Private writings are either:

1. Sealed; or,
2. Unsealed.

Seal defined.
Public and private seals, how made.

§ 3902. s 1188. A seal is a particular sign, made to attest in the most formal manner, the execution of an instrument.

Scroll or sign.

§ 3903. s 1189. A public seal in this Territory is a stamp or impression made by a public officer with an instrument provided by law, to attest the execution of an official or public document; upon the paper, or upon any substance attached to the paper, which is capable of receiving a visible impression. A private seal may be made in the same manner by any instrument, or it may be made by a scroll of the pen, or by writing the word "seal" against the signature of the writer. A scroll or other sign, made in a State or other Territory or foreign country, and recognized as a seal, must be so regarded in this Territory.

Books, maps, etc., how far evidence.

§ 3904. s 1190. Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are *prima facie* evidence of facts of general notoriety and interest.

§ 3905. s 1191. If the writing be in the custody of the adverse party, he must first have reasonable notice to produce it. If he then fail to do so, the contents of the writing

may be proved as in case of its loss. But the notice to produce it is not necessary where the writing is itself a notice, or where it has been wrongfully obtained or withheld by the adverse party.

When in possession of adverse party, notice to be given.

§ 3906. s 1192. Though a writing called for by one party is produced by the other, and is thereupon inspected by the party calling for it, he is not obliged to produce it as evidence in the case.

Writings called for and inspected may be withheld.

§ 3907. s 1193. Any writing may be proved either:

Writing, how may be proved.

1. By any one who saw the writing executed; or,

2. By evidence of the genuineness of the handwriting of the maker; or,

3. By a subscribing witness.

§ 3908. s 1194. If the subscribing witness denies or does not recollect the execution of the writing, its execution may still be proved by other evidence.

Other witness may testify.

§ 3909. s 1195. When, however, evidence is given that the party against whom the writing is offered has at any time admitted its execution, no other evidence of the execution need be given, when the instrument is one produced from the custody of the adverse party, and has been acted upon by him as genuine.

When evidence of execution not necessary.

§ 3910. s 1196. The entries and other writings of a decedent, made at or near the time of the transaction, and in a position to know the facts stated therein, may be read as *prima facie* evidence of the facts stated therein, in the following cases:

Entries of decedents, evidence in specified cases.

1. When the entry was made against the interest of the person making it.

2. When it was made in a professional capacity, and in the ordinary course of professional conduct.

3. When it was made in the performance of a duty specially enjoined by law.

§ 3911. s 1197. Every private writing, except last wills and testaments, may be acknowledged or proved and certified in the manner provided for the acknowledgment or proof of conveyances of real property, and the certificate of such acknowledgment or proof is *prima facie* evidence of the execution of the writing, in the same manner as if it were a conveyance of real property.

Private writings acknowledged and certified.

§ 3912. s 1198. Every instrument conveying or affecting real property, acknowledged, or proved and certified, as

Certified copies, or copies of record admissible without further proof.

provided by law, may, together with the certificate of acknowledgment or proof, be read in evidence, in an action or proceeding, without further proof; and a certified copy of the record of such conveyance or instrument thus acknowledged or proved, may also be read in evidence, with the like effect as the original, or proof by affidavit or otherwise, that the original is not in the possession or under the control of the party producing the certified copy.

Contents of writing, how proved.

§ 3913. s 1199. There can be no evidence of the contents of a writing, other than the writing itself, except in the following cases.

1. When the original has been lost or destroyed; in which case proof of the loss or destruction must first be made.

2. When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice.

3. When the original is a record or other document in the custody of a public officer.

4. When the original has been recorded, and a certified copy of the record is made evidence by this Code or other statute.

5. When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole. In the cases mentioned in subdivisions 3 and 4, a copy of the original, or of the record, must be produced; in those mentioned in subdivisions 1 and 2, either a copy or oral evidence of the contents.

CHAPTER V.

INDISPENSABLE EVIDENCE.

SECTION.

3914 To prove perjury and treason, more than one witness required.

3915 Will to be in writing.

3916 Transfer of real property to be in writing.

3917 Last section not to extend to certain cases.

SECTION.

3918 Agreement not in writing, when invalid.

3919 Engagement to answer for obligation of another, when deemed original.

3920 Representation of credit by writing.

§ 3914. s 1204. Perjury and treason must be proved by testimony of more than one witness. Treason by the testimony of two witnesses to the same overt act; perjury by the testimony of two witnesses, or one witness and corroborating circumstances.

To prove perjury and treason, more than one witness required.

§ 3915. s 1205. A last will and testament, except a nuncupative will, is invalid, unless it be in writing and executed with such formalities as are required by law. When therefor, such a will is to be shown, the instrument itself must be produced, or secondary evidence of its contents be given.

Will to be in writing.

§ 3916. s 1206. No estate or interest in real property, other than for leases for a term not exceeding one year, nor any trust or power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering the same, or by his lawful agent thereunto authorized by writing.

Transfer of real property to be in writing.

§ 3917. s 1207. The preceding section must not be construed to affect the power of a testator in the disposition of his real property by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law, nor to abridge the power of any court to compel the specific performance of an agreement, in case of part performance thereof.

Last section not to extend to certain cases.

Agreement
not in writing,
when invalid.

§ 3918. s 1208. In the following cases the agreement is invalid, unless the same or some note or memorandum thereof be in writing and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof.

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in the next section.

3. An agreement made upon consideration of marriage, other than a mutual promise to marry.

4. An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of sale, the price, and the names of the purchaser, and person on whose account the sale is made, is a sufficient memorandum.

5. An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

Engagement
to answer for
obligation of
another when
deemed
original.

§ 3919. s 1209. A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing:

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part in consideration of such promise.

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the princip

debtor, and the person in whose behalf it is made, his surety.

3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor, or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained from the antecedent obligation: or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation, or from another person.

4. Where a factor undertakes, for a commission, to sell merchandise and guarantee the sale.

5. When the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

§ 3920. s 1210. No evidence is admissible to charge a person upon a representation as to the credit of a third person, unless such representation, or some memorandum thereof, be in writing, and either subscribed by, or in the handwriting of the party to be charged.

Representa-
tion of credit
by writing.

CHAPTER VI.

PRODUCTION OF EVIDENCE.

SECTION.	SECTION.
3921 Writing altered, who to explain.	3945 Proper interrogatories may be prepared or may be waived by the parties.
3922 Subpœna for witness defined.	3946 Authority and duties of commissioner.
3923 Subpœna, how issued.	3947 Trial, when postponed for reason on non-return of commission.
3924 Subpœna, how served.	3948 Deposition by whom used.
3925 How if witness be concealed.	3949 Depositions may be taken before a judge, etc., upon notice to the adverse party.
3926 When witness is not compelled to attend.	3950 Manner of taking deposition; may be used by either party on trial.
3927 Person present compelled to testify.	3951 When deposition excluded.
3928 Disobedience, how punished.	3952 A deposition once taken may be read at any time.
3929 Forfeiture therefor.	3953 Deposition in this Territory to be used in other States.
3930 Warrant may issue to bring witness, when.	3954 How to procure witness upon a commission.
3931 Contents of warrant.	3955 How, if no commission.
3932 If witness be prisoner, how brought.	3956 Deposition, how taken.
3933 On whose motion.	3957 Witness not under examination may be excluded.
3934 How examined.	3958 Witness bound to attend when subpoenaed.
3935 When affidavit may be used.	3959 Witness bound to answer questions.
3936 Evidence of publication, what.	3960 Witness protected from arrest when attending or going or returning.
3937 Where filed.	3961 Arrest void, and party making arrest liable, etc.
3938 Affidavits to be used in this Territory, before whom may be taken.	3962 To make affidavit if arrested.
3939 If made in another State or Territory, before whom may be taken.	3963 Court to discharge witnesses from arrest.
3940 If made in a foreign country, before whom taken.	3964 An offer equivalent to tender.
3941 Certificate of the clerk, if taken before a judge of a court out of this Territory.	3965 Whoever pays entitled to receipt.
3942 Testimony of a witness out of the Territory, when taken.	
3943 In the Territory, when taken.	
3944 Testimony of witness out of the Territory taken upon commission issued under seal, upon notice.	

Writing altered, who to explain.

§ 3921. s 1215. The party producing a writing as genuine which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, must account for the appearance or alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties

affected by it, or otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he do that, he may give the writing in evidence, but not otherwise.

§ 3922. s 1216. The process by which the attendance of a witness is required is a subpoena. It is a writ or order directed to a person and requiring his attendance at a particular time and place to testify as a witness. It may also require him to bring with him any books, documents, or other things under his control which he is bound by law to produce in evidence. Subpoena for witness defined.

§ 3923. s 1217. The subpoena is issued as follows: Subpoena, how issued.

1. To require attendance before a court, or at the trial of an issue therein, it is issued in the name of the court, before which the attendance is required, or in which the issue is pending.

2. To require attendance out of the court, before a judge, justice or other officer authorized to administer oaths or take testimony in any matter under the laws of this Territory, it is issued by the judge, justice, or any other officer before whom the attendance is required.

3. To require attendance before a commissioner appointed to take testimony by a court of a foreign country or of the United States, or of any other State or Territory in the United States, or of any other district or county within this Territory, or before any officer or officers empowered by the laws of the United States to take testimony, it may be issued by any judge, or justice of the peace in places within their respective jurisdiction, with like power to enforce attendance; and, upon certificate of contumacy to said court, to punish contempt of their process, as such judge or justice could exercise if the subpoena directed the attendance of the witness before their courts in a matter pending therein.

§ 3924. s 1218. The service of a subpoena is made by showing the original and delivering a copy, or a ticket containing its substance to the witness personally, or by leaving a copy with some suitable person at the place of his abode, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. The service must be made so as to allow the witness a reasonable Subpoena, how served.

time for preparation and travel to the place of attendance. Such service may be made by any person.

How, if witness be concealed.

§ 3925. s 1219. If a witness is concealed in a building or vessel, so as to prevent the service of a subpoena upon him, any court or judge, or any officer issuing the subpoena, may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the United States marshal, or the sheriff of the county, serve the subpoena; and the officer must serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

When witness is not compelled to attend.

§ 3926. s 1220. A witness is not obliged to attend as a witness before any court, judge, justice, or any other officer out of the district if the case in which he is asked to testify is pending in the district court, or if pending in any other court out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the place of trial.

Persons present compelled to testify.

§ 3927. s 1221. A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such court or officer.

Disobedience, how punished.

§ 3928. s 1222. Disobedience to a subpoena, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt of the court or officer issuing the subpoena or requiring the witness to be sworn; and if the witness be a party, his complaint or answer may be stricken out.

Forfeiture therefor.

§ 3929. s 1223. A witness disobeying a subpoena also forfeits to the party aggrieved the sum of one hundred dollars, and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

Warrant may issue to bring witness, when

§ 3930. s 1224. In case of a failure of a witness to attend, the court or officer issuing the subpoena, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the United States marshal, or to the sheriff of the county to arrest the witness and bring him before the court or officer where his attendance was required.

Contents of warrant.

§ 3931. s 1225. Every warrant of commitment, issued by a court or officer pursuant to this Chapter, must specify therein, particularly, the cause of the commitment, and if it

be for refusing to answer a question, such question must be stated in the warrant. And every warrant to arrest or commit a witness, pursuant to this Chapter, must be directed to the United States marshal, or to the sheriff of the county where the witness may be and must be executed by the officer in the same manner as process issued by the district court.

§ 3932. s 1226. If the witness be a prisoner, confined in a jail or prison within this Territory, an order for his examination in the prison upon deposition, or for his temporary removal and production before a court or officer for the purpose of being orally examined may be made as follows:

If witness be prisoner, how brought.

1. By the court itself in which the action or special proceeding is pending, unless it be a justice's court.

2. By a justice of the supreme court, judge of the district court or probate judge of the county where the action or proceeding is pending, if pending before a justice's court or before a judge or other person out of court.

§ 3933. s 1227. Such order can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

On whose motion.

§ 3934. s 1228. If the witness be imprisoned in the district or county where the action or proceeding is pending, his production may be required. In all other cases his examination, when allowed, must be taken upon deposition.

How examined.

§ 3935. s 1229. An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding, to obtain a provisional remedy, the examination of a witness or a stay of proceedings, or upon a motion and in any other case expressly permitted by some other provision of this Code.

When an affidavit may be used.

§ 3936. s 1230. Evidence of the publication of a document or notice required by law or an order of a court or judge to be published in a newspaper, may be given by the affidavit of the printer of the newspaper, or his foreman, or principal clerk, annexed to a copy of the document or notice specifying the times when, and the paper in which the publication was made.

Evidence of publication, what.

§ 3937. s 1231. If such affidavit be made in an action or special proceeding pending in a court, it may be filed with the court or clerk thereof. If not so made it may be

Where filed.

filed with the recorder of the county where the newspaper is printed. In either case the original affidavit, or a copy thereof, certified by the judge of the court or officer having it in custody, is *prima facie* evidence of the facts stated therein.

Affidavits to be used in this Territory, before whom may be taken.

§ 3938. s 1232. An affidavit to be used before any court, judge or officer of this Territory, may be taken before any judge or clerk of any court, or any justice of the peace or notary public in this Territory.

If made in another State or Territory, before whom may be taken.

§ 3939. s 1233. An affidavit taken in another State or Territory of the United States, to be used in this Territory, may be taken before a commissioner appointed by the Governor of this Territory to take affidavits and depositions in such other State or Territory, or before any notary public in another State or Territory, or before any judge or clerk of a court of record having a seal.

If made in a foreign country, before whom taken.

§ 3940. s 1234. An affidavit taken in a foreign country to be used in this Territory, may be taken before an ambassador, minister, consul, vice-consul, or consular agent of the United States, or before any judge of a court of record having a seal, in such foreign country.

Certificate of the clerk, if taken before a judge of a court out of this Territory.

§ 3941. s 1235. When an affidavit is taken before a judge or a court in another State or Territory, or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof, must be certified by the clerk of the court, under seal thereof.

Testimony of a witness out of the Territory, when taken.

§ 3942. s 1236. The testimony of a witness out of the Territory may be taken by deposition in an action, at any time after the service of the summons, or the appearance of the defendant; and, in a special proceeding, at any time after a question of fact has arisen therein.

In the Territory, when taken.

§ 3943. s 1237. The testimony of a witness in this Territory may be taken by deposition in an action, at any time after the service of the summons or the appearance of the defendant; and, in a special proceeding, after a question of fact has arisen therein in the following cases:

1. When the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended.

2. When the witness resides out of the district, when the action is pending in the district court, and out of the

county in other cases, in which his testimony is to be used.

3. When the witness is about to leave the district or county where the action is to be tried, and will probably continue absent when the testimony is required.

4. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend.

5. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required.

§ 3944. s 1238. The deposition of a witness out of this Territory may be taken upon commission issued from the court, under the seal of the court, upon an order of the judge or court, or probate judge, on the application of either party, upon five days' previous notice to the other. If issued to any place within the United States, it may be directed to any person agreed upon by the parties, or if they do not agree, to any judge or justice of the peace, or person named or commissioned by the officers issuing it. If issued to any country out of the United States, it may be directed to a minister, ambassador, consul, vice-consul, or consular agent of the United States in such country, or to any person agreed upon by the parties.

Testimony of witness out of the Territory, taken upon commission issued under seal, upon notice.

§ 3945. s 1239. Such proper interrogatories, direct and cross, as the respective parties may propose to be settled, if the parties disagree as to their form, by the judge or officer granting the order for the commission, at a day fixed in the order, may be annexed to the commission; or, when the parties agree to that mode, the examination may be without written interrogatories.

Proper interrogatories may be prepared, or may be waived by the parties.

§ 3946. s 1240. The commission must authorize the commissioners to administer an oath to the witness, and to take his deposition in answer to the interrogatories, or when the examination is to be without interrogatories, in respect to the question in dispute, and to certify the deposition to the court, in a sealed envelope, directed to the clerk or other person designated, or agreed upon, and forwarded to him by mail or other usual channel of conveyance.

Authority and duties of commissioner.

§ 3947. s 1241. A trial or other proceeding must not be postponed by reason of a commission not returned, except upon evidence, satisfactory to the court, that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

Trial, when postponed for reason of non-return of commission.

Deposition, by whom used.

§ 3948. s 1242. The deposition mentioned in this Chapter may be used by either party on the trial, or other proceeding, against any other party giving or receiving the notice, subject to all just exceptions.

Depositions may be taken before a judge, etc., upon notice to the adverse party.

§ 3949. s 1243. Either party may have the deposition taken of a witness in this Territory, in either of the cases mentioned in section 1237, before a judge or officer authorized to administer oaths, on serving upon the adverse party previous notice of the time and place of examination, together with a copy of an affidavit, showing that the case is within that section. Such notice must be at least five days, adding also one day for every twenty-five miles of the distance of the place of examination from the residence of the person to whom the notice is given, unless, for a cause shown, a judge, by order, prescribe a shorter time. When the shorter time is prescribed, a copy of the order must be served with the notice.

Manner of taking deposition.

§ 3950. s 1244. Either party may attend the examination and put such questions, direct and cross, as may be proper. The deposition, when completed, must be carefully read to the witness and corrected by him in any particular, if desired; it must then be subscribed by the witness, certified by the judge or officer taking the deposition, enclosed in an envelope or wrapper, sealed and directed to the clerk of the court in which the action is pending, or to such person as the parties, in writing, may agree upon, and either delivered by the judge or officer to the clerk of such person, or transmitted through the mail or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions; but if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken under subdivisions 2, 3 and 4 of section 1237, proof must be made at the trial that the witness continues absent or infirm, or is dead. The deposition thus taken may be also read in case of the death of the witness.

May be used by either party on the trial.

When deposition excluded.

§ 3951. s 1245. Notwithstanding the taking of a deposition, it may be excluded from the case upon proof that sufficient notice was not given to the party against whom it is

offered to enable him to attend the taking thereof, or that the taking was not in all respects fair.

§ 3952. s 1246. When a deposition has been once taken, it may be read by either party in any stage of the same action or proceeding, or in any other action between the same parties, upon the same subject, and is then deemed the evidence of the party reading it.

A deposition once taken may be read at any time.

§ 3953. s 1247. Any party to an action or special proceeding in a court or before a judge of a State or other Territory, may obtain the testimony of a witness residing in this Territory to be used in such action or proceeding, in the cases mentioned in the next two sections.

Deposition in the Territory to be used in other States.

§ 3954. s 1248. If a commission to take such testimony has been issued from the court or a judge before whom such action or proceeding is pending, on producing the commission to a district or probate judge, with an affidavit satisfactory to him of the materiality of the testimony, he may issue a subpoena to the witness, requiring him to appear and testify before the commissioner named in the commission, at a specified time and place.

How to procure witness upon commission.

§ 3955. s 1249. If a commission has not been issued, and it appears to a district or probate judge, or justice of the peace, by affidavit satisfactory to him:

How if no commission.

1. That the testimony of the witness is material to either party.

2. That a commission to take the testimony of such witness has not been issued.

3. That, according to the law of the State or Territory where the action or special proceeding is pending, the deposition of a witness taken under such circumstances, and before such judge or justice, will be received in the action or proceeding.

He must issue his subpoena, requiring the witness to appear and testify before him at a specified time and place.

§ 3956. s 1250. Upon the appearance of the witness, the judge or justice must cause his testimony to be taken in writing, and must certify and transmit the same to the court or judge before whom the action or proceeding is pending, in such manner as the law of that State or Territory requires.

Deposition, how taken.

§ 3957. s 1251. If either party requires it, the judge may exclude from the court room any witness of the adverse party, not at the time under examination, so that he may not hear the testimony of other witnesses.

Witness not under examination may be excluded.

Witness
bound to at-
tend when
subpoenaed

§ 3958. s 1252. A witness, served with a subpoena, must attend at the time appointed, with any papers under his control required by the subpoena, and answer all pertinent and legal questions: and unless sooner discharged, must remain until the testimony is closed.

Witness
bound to
answer
questions.

§ 3959. s 1253. A witness must answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself: but he need not give an answer which will have a tendency to subject him to punishment for felony: nor need he give an answer which will have a direct tendency to degrade his character, unless it be to the very fact in issue, or to a fact from which the fact in issue would be presumed. But a witness must answer as to the fact of his previous conviction for felony.

Witnesses
protected
from arrest
when attend-
ing or going
or returning.

§ 3960. s 1254. Every person who has been, in good faith, served with a subpoena to attend as a witness before a court, judge, commissioner, referee, or other person, in a case where the disobedience of the witness may be punished as a contempt, is exonerated from arrest in a civil action while going to the place of attendance, necessarily remaining there, and returning therefrom.

Arrest void,
and party
making arrest
liable, etc.

§ 3961. s 1255. The arrest of a witness contrary to the preceding section is void, and when wilfully made, is a contempt of the court, and the person making it is responsible to the witness arrested for double the amount of the damages which may be assessed against him, and is also liable to an action at the suit of the party serving the witness with the subpoena, for the damages sustained by him in consequence of the arrest.

To make
affidavit if ar-
rested.

§ 3962. s 1256. An officer is not liable to the party for making the arrest in ignorance of the facts creating the exoneration, but is liable for any subsequent detention of the party, if such party claim the exemption, and make an affidavit stating:

1. That he has been served with a subpoena to attend as a witness before a court, officer or other person, specifying the same, the place of attendance and the action or proceeding in which the subpoena was issued; and,
2. That he has not thus been served by his own procurement, with the intention of avoiding an arrest.
3. That he is at the time going to the place of attend-

ance, or returning therefrom, or remaining there in obedience to the subpoena.

The affidavit may be taken by the officers and exonerates him from liability for discharging the witness when arrested.

§ 3963. s 1257. The court or officer issuing the subpoena, and the court or officer before whom the attendance is required, may discharge the witness from an arrest made in violation of section 1254. If the court have adjourned before the arrest, or before application for the discharge, a judge of the court or a probate judge may grant the discharge.

Court to discharge witness from arrest.

§ 3964. s 1258. An offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.

An offer equivalent to tender.

§ 3965. s 1259. Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt, as a condition of the payment or delivery.

Whoever pays entitled to receipt.

CHAPTER VII.

PROCEEDING TO PERPETUATE TESTIMONY.

SECTION.

3966 Evidence may be perpetuated.
3967 Manner of application for order.
3968 Appointee of judge, authority of.
3969 Manner of taking the deposition.

SECTION.

3970 Papers filed, *prima facie* evidence.
3971 When the evidence may be produced.
3972 Effect of the deposition.

§ 3966. s 1264. The testimony of a witness may be taken and perpetuated as provided in this Chapter.

Evidence may be perpetuated.

§ 3967. s 1265. The applicant must produce to a dis-

Manner of
application for
order.

trict judge, or to a probate judge, a petition verified by the oath of the applicant stating:

1. That the applicant expects to be a party to an action in a court in this Territory, and in such case the names of the persons whom he expects will be adverse parties; or,

2. That the proof of some fact is necessary to perfect the title to the property in which he is interested, or to establish marriage, descent, heirship, or any other matter which it may hereafter become material to establish, though no suit may at the time be anticipated, or if anticipated, he may not know the parties to such suit, and,

3. The name of the witness to be examined, his place of residence, and a general outline of the facts expected to be proved. The judge to whom such petition is presented, must make an order allowing the examination, and designating the officer before whom the same must be taken, and prescribing the notice to be given, which notice, if the parties expectant are known and reside in this Territory, must be formally served, and if unknown, such notice must be served on the recorder of the county where the property to be affected by the evidence is situated, or the judge making the order resides, as may be directed by him, and by publication thereof in some newspaper, to be designated by the judge, for the same period required for the publication of summons. The judge must also designate in his order the recorder of the county to whom the deposition must be returned when taken.

Appointee of
judge, au-
thority of.

§ 3968. s 1266. The person appointed by the judge to take the depositions is authorized, if a resident of this Territory, on receiving a copy of the order of the judge, and of the notice prescribed in the last section, with proof of its personal service or publication; or, if a resident without the Territory, on receiving the commission mentioned in the next section, with proof of like service or publication of the notice; to take the deposition of the witness named in the order of the judge, or in the commission, or if more than one witness is thus named, of such of them as appear before him, at the time designated, and the taking of the same may be continued from time to time.

§ 3969. s 1267. The examination must be by question and answer, and if the testimony is to be taken in another

State or Territory, it must be taken upon a commission to be issued by the judge allowing the examination, under the seal of the court of which he is judge, and upon interrogatories to be settled in the same manner as in cases of depositions taken under commission in pending actions, unless the parties expectant, if known, otherwise agree. If such parties are unknown, notice of the settlement of the interrogatories shall be published in some newspaper for such time as the judge may designate. The deposition when completed, must be carefully read to, and subscribed by the witness, then certified by the officer or person taking the same, and shall then be sealed up and delivered or transmitted to the recorder of the county designated in the order of the judge allowing the examination, who shall file the same when received. The judge allowing the examination shall file with the recorder the order for examination, the petition on which the same was granted, with proof of service of the order and notice.

Manner of taking the deposition.

§ 3970. s 1268. The petition and order and papers filed by the judge, as provided in the last section, or a certified copy thereof are *prima facie* evidence of the facts stated therein to show compliance with the provisions of this Chapter.

Papers filed, . . .
prima facie evidence.

§ 3971. s 1269. If a trial be had between the parties named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the facts which such depositions prove, or tend to prove, upon proof of the death, or insanity of the witnesses, or that they cannot be found, or are unable, by reason of age or other infirmity, to give their testimony, the depositions or copies thereof may be used by either party subject to all legal objections; but if the parties attend at the examination, no objection to the form of an interrogatory can be made at the trial, unless the same was stated at the examination.

When the evidence may be produced

§ 3972. s 1270. The deposition so taken and read in evidence has the same effect as the oral testimony of the witness, and no other, and every objection to the witness, or to the relevancy of any question put to him, or of any answer given by him, may be made in the same manner as if he were examined orally at the trial.

Effect of the deposition.

CHAPTER VIII.

ADMINISTRATION OF OATHS AND AFFIRMATIONS.

SECTION.

3973 Judicial and certain officers authorized to administer oaths.

3974 Form of ordinary oath to a witness.

SECTION.

3975 Form may be varied to suit witness' belief.

3976 Same.

3977 Any person who prefers it, may declare or affirm.

Judicial and certain officers authorized to administer oaths.

§ 3973. s 1275. Every court, every judge or clerk or deputy clerk of any court, every justice, and every notary public, the secretary of the Territory, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has power to administer oaths or affirmations.

Form of ordinary oath to a witness.

§ 3974. s 1276. An oath, or affirmation, in an action or proceeding, may be administered as follows, the person who swears, or affirms, expressing his assent when addressed in the following form:

“ You do solemnly swear (or affirm as the case may be) that the evidence you shall give in this issue (or matter) pending between —— and —— shall be the truth, the whole truth, and nothing but the truth, so help you God.”

Form may be varied to suit witness' belief.

§ 3975. s 1277. Whenever the court before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing, connected with or in addition to the usual form of administration, which in his opinion, is more solemn or obligatory, the court may, in its discretion adopt that mode.

Same.

§ 3976. s 1278. When a person is sworn who believes in other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion if there be any such.

Any person who prefers it may declare or affirm.

§ 3977. s 1279. Any person who desires it may, at his option, instead of taking an oath make his solemn affirmation or declaration, by assenting, when addressed in the following form, “ You do solemnly affirm (or declare) that,” etc., as in section 1276.

CHAPTER IX.

GENERAL PROVISIONS.

SECTION.

3978 Jury to decide questions of fact.
 3979 Court to decide questions of law; admissibility of testimony.
 3980 Provisions respecting evidence before a jury, made applicable before court, referee, etc.

SECTION.

3981 Moneys paid into court to be delivered to clerk.
 3982 Conflicting acts repealed; saving clause.

§ 3978. s 1284. All questions of fact, where the trial is by jury, other than those mentioned in the next section are to be decided by the jury, and all evidence thereon is to be addressed to them except when otherwise provided by this Code.

§ 3979. s 1285. All questions of law, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it. Whenever the knowledge of the court is by law made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it.

§ 3980. s 1286. The provisions contained in this part of the Code respecting the evidence on a trial before a jury, are equally applicable on the trial of a question of fact before a court, referee, or other officer.

§ 3981. s 1287. Whenever moneys are paid into or deposited in court, the same shall be delivered to the clerk in person, or to such of his deputies as shall be specially authorized by his appointment in writing to receive the same.

§ 3982. s 1288. All acts and parts of acts in controversion with this Code are hereby repealed, saving and excepting all rights, actions, and rights of action, which shall have accrued, and exist when this Code takes effect, and all actions then commenced shall be prosecuted to a determination in conformity to the rules herein prescribed, so far as applicable.

[Approved, March 13, 1884.]

JUDICIAL DISTRICTS.

SECTION.

3983 Second judicial district.

3984 First and third judicial districts; certain actions at law, etc., to be transferred.

3985 Clerk of the third district court to make transcripts, etc.

SECTION.

3986 Clerk's office to be established at Ogden; when.

3987 When cases arising in the several counties shall be tried; a change of place to be allowed.

Second Judicial District.
Dec. 27, 1865.
Feb. 20, 1880.
First Judicial District.

§ 3983. (1865) Kane, Washington, Iron, Beaver and Piute counties are the Second Judicial District.

§ 3984. s 1. The counties of Millard, Sanpete, Sevier, Juab, Wasatch, Utah, Emery, Uintah, Weber, Box Elder, Cache, Rich and Morgan, shall hereafter constitute the First Judicial District; and the counties of Salt Lake, Tooele, Summit and Davis shall constitute the Third Judicial District of this Territory. All actions at law, suits in equity, and indictments for crime and other legal proceedings which may be pending in the Third Judicial District Court, between the inhabitants or by or against the inhabitants of any or either of said counties of Weber, Box Elder, Cache, Rich and Morgan shall be continued, transferred to and prosecuted to judgment and execution in the said First Judicial District Court, which shall have jurisdiction of the subject matter thereof, and all papers and records relating to the same shall be transferred to such court in the manner hereinafter provided.

Certain actions at law, etc., to be transferred.

Papers and records to be transferred.

Clerk of the Third District Court to make transcripts, etc

§ 3985. s 2. The clerk of the Third Judicial District Court is hereby required to make a transcript from his record of the proceedings of said court relating to all cases pending therein, mentioned in section 1 of this act, and transmit the same to the clerk of the First Judicial District Court aforesaid, at Ogden city, Weber county, together with all papers filed in the said cases, on or before the first day of April, A. D. 1880.

Clerk's office to be established at Ogden, when.

§ 3986. s 3. As soon as the Governor shall appoint the place and time for holding courts in that part of the First Judicial District contained in the said counties of Weber, Box Elder, Cache, Rich and Morgan, a clerk's office shall be es-

tablished at the place so designated, and the records of the Records.
 Third Judicial District purchased by the county court of
 Weber county, and now in the clerk's office at Ogden city,
 shall become part of the records of the First Judicial District,
 and be kept at the clerk's office first named in this section.

§ 3987. s 4. All cases, both civil and criminal, in which When cases arising in the several counties shall be tried.
 the cause of action shall arise in either of the counties of
 Utah, Juab, Millard, Sanpete, Sevier, Wasatch, Emery or
 Uintah, shall be heard, tried and determined in the said First
 Judicial District Court, at the city of Provo, or at such other
 place or places within the territorial limits of such last named
 counties, as shall be fixed by the Governor. And all cases,
 both civil and criminal, in which the cause of action shall arise A change in the place of trial to be allowed.
 in either of the counties of Weber, Box Elder, Cache, Rich
 or Morgan, shall be tried and determined in the said First
 Judicial District Court at Ogden; *Provided*, That in all cases
 a change of the place of trial may be allowed as may be pre-
 scribed by law. (1)

(1) See Vol. I, §§ 74, 76, 83.

PART ELEVENTH.

PROCEDURE OF PROBATE COURTS

IN THE

SETTLEMENT OF ESTATES AND IN GUARDIANSHIP.

Approved, March 13, 1884.

CHAPTER I.

OF WILLS.

SECTION.

3988 Jurisdiction of probate court over estate, where exercised.

SECTION.

3989 When jurisdiction decided by first application.

Jurisdiction of probate court over the estate, when exercised.

§ 3988. s 1. Wills must be proved, and letters testamentary or of administration granted:

1. In the county of which the decedent was a resident at the time of his death, in whatever place he may have died.

2. In the county in which the decedent may have died, leaving estate therein, he not being a resident of the Territory.

3. In the county in which any part of the estate may be, the decedent having died out of the Territory and not a resident thereof at the time of his death.

4. In the county in which any part of the estate may be, the decedent not being a resident of the Territory, and not leaving estate in the county in which he died.

5. In all other cases, in the county where application for letters is first made.

When jurisdiction decided by first application.

§ 3989. s 2. When the estate of the decedent is in more than one county, he having died out of the Territory, and not having been a resident thereof at the time of his

death, or being such non-resident, and dying within the Territory, and not leaving estate in the county where he died, the probate court of that county in which application is first made for letters testamentary or of administration, has exclusive jurisdiction of the settlement of the estate.

CHAPTER II.

OF THE PROBATE OF WILLS.

SECTION.

- 3990 Custodian of will to deliver same to whom; penalty.
 3991 Who may petition for probate of will.
 3992 Contents of petition.
 3993 When executor forfeits right to letters.
 3994 Will to accompany petition or its presentation prayed for and how enforced.
 3995 Notice of petition for probate, how given.

SECTION.

- 3996 Heirs and named executors to be notified, how.
 3997 Petition may be presented to judge at chambers, and what judge may do.
 3998 Hearing proof of will after proof of service of notice.
 3999 Who may appear and contest the will.
 4000 Probate when no contest.
 4001 Olographic wills.

§ 3990. s 1. Every custodian of a will, within thirty days after receipt of information that the maker thereof is dead, must deliver the same to the probate court having jurisdiction of the estate, or to the executor named therein. A failure to comply with the provisions of this section makes the person failing responsible for all damages sustained by any one injured thereby.

§ 3991. s 2. Any executor, devisee, or legatee named in any will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will proved, whether the same be in writing in his possession or not, or is lost or destroyed, or beyond the jurisdiction of the Territory, or a nuncupative will.

§ 3992. s 3. A petition for the probate of a will must show:

Custodian of will to deliver same, to whom. Penalty.

Who may petition for probate of will.

Contents of petition.

1. The jurisdictional facts.
2. Whether the person named as executor consents to act, or renounces his right to letters testamentary.
3. The names, ages, and residence of the heirs and devisees of the decedent, so far as known to the petitioner.
4. The probable value and character of the property of the estate.
5. The name of the person for whom letters of testamentary are prayed.

No defect of form, or in the statement of jurisdictional facts actually existing, shall make void the probate of a will.

When executor forfeits right to letters

§ 3993. s 4. If the person named in a will as executor, for thirty days after he has knowledge of the death of the testator and that he is named as executor, fails to petition the proper court for the probate of the will, and that letters testamentary be issued to him, he may be held to have renounced his rights to letters, and the court may appoint any other competent person administrator, unless good cause for delay is shown.

Will to accompany petition or its presentation prayed for and how enforced.

§ 3994. s 5. If it is alleged in any petition that any will is in the possession of a third person, and the court is satisfied that the allegation is correct, an order must be issued and served upon the person having possession of the will, requiring him to produce it at a time named in the order. If he has possession of the will, and neglects or refuses to produce it in obedience to the order, he may, by warrant from the court, be committed to the jail of the county, and be kept in close confinement until he produces it.

Notice of petition for probate, how given.

§ 3995. s 6. When the petition is filed and the will produced, the clerk of the court must set the petition for hearing by the court upon some day not less than ten or more than thirty days from the production of the will. Notice of the hearing shall be given by such clerk by publishing the same in a newspaper of the county; if there is none, then by written or printed notices posted in at least three public places in the county. If the notice is published in a weekly newspaper, it must appear therein on at least three different days of publication; and if in a newspaper published oftener than once a week, it shall be so published that there must be at least ten days from the first to the last day of publication,

both the first and the last day being included. If the notice is by posting, it must be given at least ten days before the hearing.

§ 3996. s 7. Copies of the notice of the time appointed for the probate of the will must be addressed to the heirs of the testator resident in the Territory, at their places of residence, if known to the petitioner, and deposited in the post office, with the postage thereon prepaid, at least ten days before the hearing. If their place of residence be not known, the copies of notice may be addressed to them, and deposited in the post office at the county seat of the county where the proceedings are pending. A copy of the same notice must in like manner be mailed to the person named as executor, if he be not the petitioner; also, to any person named as co-executor not petitioning, if their places of residence be known. Proof of mailing the copies of the notice must be made at the hearing. Personal service of copies of the notice at least ten days before the day of hearing is equivalent to mailing.

Heirs and named executors to be notified, how.

§ 3997. s 8. The judge or clerk of the probate court may at any time receive petitions for the probate of wills. The judge may make and issue all necessary orders and writs to enforce the production of wills and the attendance of witnesses, and may appoint a time for hearing petitions, trials of issue and admitting wills to probate.

Petition may be presented to judge at chambers, and what judge may do.

§ 3998. s 9. At the time appointed for the hearing, or the time to which the hearing may have been postponed, the court, unless the parties appear, must require proof that the notice has been given, which being made, the court must hear testimony in proof of the will.

Hearing proof of will after proof of service of notice.

§ 3999. s 10. Any person interested may appear and contest the will. Devisees, legatees, or heirs of an estate may contest the will through their guardians, or attorneys appointed by themselves or by the court for that purpose; but a contest made by an attorney appointed by the court does not bar a contest after probate by the party so represented, if commenced within the time provided in section 22 of this Chapter, nor does the non-appointment of an attorney by the court of itself invalidate the probate of a will.

Who may appear and contest the will.

§ 4000. s 11. If no person appears to contest the probate of a will, the court may admit it to probate on the testi-

Probate, when no contest.

mony of one of the subscribing witnesses only, if he testifies that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution.

Olographic
wills

§ 4001. s 12. An olographic will may be proved in the same manner that other private writings are proved.

CONTESTING PROBATE OF WILLS.

SECTION.

4002 Contestant to file grounds of contest and petitioner to reply.
4003 Proofs of subscribing witnesses must be reduced to writing, etc.
4004 Witnesses, who and how many; proof of handwriting admitted when.

SECTION.

4005 Testimony reduced to writing may be used in subsequent contests, etc.
4006 When proved, certificate to be attached.
4007 Will and proof of to be filed and recorded.

Contestant to
file grounds of
contest, and
petitioner to
reply.

§ 4002. s 13. If any one appears to contest the will, he must file written grounds of opposition to the probate thereof, and serve a copy on the petitioner and other residents of the county interested in the estate, any one or more of whom may demur thereto upon any of the grounds mentioned in the Code of Civil Procedure, as grounds of demurrer. If the demurrer is sustained, the court must allow the contestant a reasonable time, not exceeding ten days, within which to amend his written opposition. If the demurrer is overruled, the petitioners and others interested may jointly or separately answer the contestant's grounds, traversing or otherwise obviating or avoiding the objections. All issues whether of law or fact must be tried by the court, unless an issue of fact be referred as hereinafter provided.

Proofs of sub-
scribing wit-
nesses must
be reduced to
writing, etc.

§ 4003. s 14. At the hearing of the contest, the proofs of the subscribing witnesses must be reduced to writing, whereupon the judgment of the court must be rendered, either admitting the will to probate or rejecting it. If the will is admitted to probate, the judgment, will, and proofs of the subscribing witnesses must be recorded.

§ 4004. s 15. If the will is contested, all the subscribing

witnesses who are present in the county, and who are of sound mind, must be produced and examined, and the death, absence, or insanity of any of them must be satisfactorily shown to the court. If none of the subscribing witnesses reside in the county at the time appointed for proving the will, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and as evidence of the execution it may admit proof of the handwriting of the testator, and of the subscribing witnesses, or any of them.

Witnesses, who and how many to be examined! Proof of handwriting admitted when.

§ 4005. s 16. The testimony of each witness, reduced to writing and signed by him, shall be good evidence in any subsequent contests concerning the validity of the will, or the sufficiency of the proof thereof, if the witness be dead, or has permanently removed from the Territory.

Testimony reduced to writing for future evidence.

§ 4006. s 17. If the court is satisfied, upon the proof taken, that the will was duly executed, and that the testator at the time of its execution was of sound and disposing mind, and not acting under duress, menace, fraud, or undue influence, a certificate of the proof signed by the judge and attested by the seal of the court, must be attached to the will.

If proved, certificate to be attached.

§ 4007. s 18. The will, and a certificate of the proof thereof, must be filed and recorded by the clerk, and the same, when so filed and recorded, shall constitute part of the record in the cause or proceeding. All testimony reduced to writing, shall be filed by the clerk.

Will and proof to be filed and recorded.

PROBATE OF FOREIGN WILLS.

SECTION.

SECTION.

- 4008 Wills proved in other States to be recorded, when and where.
- 4009 Proceedings on the production of a foreign will.
- 4010 Hearing proof of probate of foreign wills.

§ 4008. s 19. All wills duly proved and allowed in any of the United States or Territories, or in any foreign country or State, may be allowed and recorded in the probate court of any county in which the testator shall have left any estate.

Wills proved in other states to be recorded, when and where.

Proceedings
on the pro-
duction of a
foreign will.

§ 4009. § 20. When a copy of the will and the probate thereof, duly authenticated, shall be produced by the executor, or by any other person interested in the will, with a petition for letters, the same must be filed, and the court or clerk must appoint a time for the hearing, notice whereof must be given as hereinbefore provided for an original petition for the probate of a will.

Hearing proof
of probate of
foreign will.

§ 4010. § 21. If, on the hearing, it appears upon the face of the record that the will has been proved, allowed, and admitted to probate in any of the United States or Territories, or in any foreign country, and that it was executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, or in conformity with the laws of this Territory, it must be admitted to probate and have the same force and effect as a will first admitted to probate in this Territory, and letters testamentary or of administration issued thereon.

CONTESTING THE WILL AFTER PROBATE.

SECTION.

- 4011 The probate may be contested within one year.
4012 Citation to be issued to parties interested.
4013 The hearing had on proof of service.

SECTION.

- 4014 On revocation of probate, powers of executor, etc., cease, but not liable for acts done in good faith.
4015 Costs and expenses, by whom paid.
4016 Probate, when conclusive; saving clause; infants, etc.

The probate
may be con-
tested within
one year.

§ 4011. § 22. When a will has been admitted to probate, any person interested who has not previously contested, may at any time within one year after such probate, contest the same or the validity of the will. For that purpose he must file in the court in which the will was proved, a petition in writing, containing his allegations against the validity of the will or against the sufficiency of the proof, and praying that the probate may be revoked.

§ 4012. s 23. Upon filing the petition, a citation must be issued to the executors of the will, or to the administrators, with the will annexed, and to all the legatees and devisees mentioned in the will, and heirs residing in the Territory, so far as known to the petitioner, or to their guardians, if any of them are minors, or to their personal representatives, if any of them are dead: requiring them to appear before the court on some day therein specified, to show cause why the probate of the will should not be revoked.

§ 4013. s 24. At the time appointed for showing cause, or at any time to which the hearing is postponed, personal service of the citations having been made upon any person named therein, the court must proceed to try the issues of facts joined in the same manner as in an original contest of a will. If upon hearing the proofs of the parties, the court shall decide that the will is for any reason invalid, or that it is not sufficiently proved to be the last will of the testator, the probate must be annulled and revoked.

§ 4014. s 25. Upon the revocation being made, the powers of the executor, or administrator with the will annexed, must cease; but such executor or administrator shall not be liable for any act done in good faith previous to the revocation.

§ 4015. s 26. The fees and expenses must be paid by the party contesting the validity or probate of the will, if the will in probate is confirmed. If the probate is revoked, the costs must be paid by the party who resisted the revocation, or out of the property of the decedent, as the court directs.

§ 4016. s 27. If no person, within one year after the probate of a will, contested the same or the validity thereof, the probate of the will is conclusive, saving to infants and persons of unsound mind, a like period of one year after their respective disabilities are removed.

PROBATE OF LOST OR DESTROYED WILLS.

4017 Proof of lost or destroyed will 4019 To be certified, recorded and letters thereon granted.

4018 Must have been in existence at 4020 Court to restrain injurious acts of executors or administrators, etc.

Proof of lost or destroyed will to be taken.

§ 4017. s 28. Whenever any will is lost or destroyed, the probate court must take proof of the execution and validity thereof, and establish the same; notice to all persons interested being first given, as prescribed in regard to proofs of wills in other cases. All the testimony given must be reduced to writing, and signed by the witnesses.

Must have been in existence at time of death.

§ 4018. s 29. No will shall be proved as a lost or destroyed will, unless the same is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions are clearly and distinctly proved by at least two credible witnesses.

To be certified, recorded, and letters thereon granted.

§ 4019. 30. When a lost will is established the provisions thereof must be distinctly stated and certified by the judge under his hand and the seal of the court, and the certificate must be filed and recorded as other wills are filed and recorded, and letters testamentary or of administration, with the will annexed, must be issued thereon in the same manner as upon wills produced and duly proved. The testimony must be reduced to writing, signed, certified, and filed as in other cases, and shall have the same effect as evidence, as provided in section 16 of this Chapter.

Courts to restrain injurious acts of executors or administrators during proceedings, etc.

§ 4020. s 31. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration are granted on the estate of the testator, or letters testamentary of any previous will of the testator are granted, the court may restrain the administrators or executors so appointed from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

THE PROOF OF NUNCUPATIVE WILLS.

SECTION.

4021 Nuncupative wills, when and how admitted to probate.

4022 Additional requirements in probate of nuncupative wills.

SECTION.

4023 In contests, etc., provisions as to other wills apply.

§ 4021. s 32. Nuncupative wills may at any time, within six months after the testamentary words are spoken by the decedent, be admitted to probate, on petition and notice as provided for the probate of written wills. The petition, in addition to the jurisdictional facts, must allege that the testamentary words or the substance thereof were reduced to writing within thirty days after they were spoken, which writing must accompany the petition.

Nuncupative wills, when and how admitted to probate.

§ 4022. s 33. The probate court must not receive or entertain a petition for the probate of a nuncupative [will] until the lapse of ten days from the death of the testator, nor must such petition at any time be acted on until the testamentary words are, or their substance is, reduced to writing and filed with the petition, nor until the surviving husband or wife, (if any) and all other persons resident in the Territory or county interested in the estate, are notified as hereinbefore provided.

Additional requirements in probate of nuncupative wills.

§ 4023. s 34. Contests of the probate of nuncupative wills, and appointments of executors and administrators of the estate devised thereby, must be had, conducted and made as hereinbefore provided in cases of the probate of written wills.

Contest, etc., to conform to provisions as to other wills.

CHAPTER III.

OF EXECUTORS AND ADMINISTRATORS—THEIR LETTERS, BONDS, REMOVALS
AND SUSPENSIONS.

SECTION.

- 4024 To whom letters on proved wills to issue.
- 4025 Who is incompetent as an executor.
- 4026 Interested parties may file objections.
- 4027 When authority of unmarried woman ceases; married woman may be executrix.

SECTION.

- 4028 No executor of an executor can act.
- 4029 Letters when executor is minor or non-resident, etc.
- 4030 Acts of portion of executors, when valid.
- 4031 Authority of administrator with will annexed; letters, how issued.

To whom
letters on
proved will to
issue.

§ 4024. s 1. The court admitting a will to probate, after the same is proved and allowed, must issue letters thereon to the persons named therein as executors, who are competent to discharge the trust, who must appear and qualify, unless objection is made, as provided in section 3 of this Chapter.

Who are in
competent as
executors.

§ 4025. s 2. No person is competent to serve as executor who, at the time the will is admitted to probate, is:

1. Under the age of majority.
2. Convicted of an infamous crime.

3. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

If the sole executor or all the executors are incompetent, or renounce, or fail to apply for letters, or to appear and qualify within thirty days after his or their appointment, letters of administration, with the will annexed, must be issued as designated and provided for the granting of letters in cases of intestacy.

Interested
parties may
file objections.

§ 4026. s 3. Any person interested in a will may file objections in writing, to granting letters testamentary to the persons named as executors, or any of them, and the objections must be heard and determined by the court. A petition may, at the same time, be filed for letters of administration, with the will annexed.

§ 4027. s 4. When an unmarried woman, appointed executrix, marries, the court or judge thereof may upon the motion of any person interested in the estate, revoke her authority and appoint another person in her place. When a married woman is named in a last will, as executrix, she may be appointed and serve in every respect as a *femme sole*.

When an authority of unmarried woman ceases. Married woman may be executrix, etc.

§ 4028. s 5. No executor of an executor shall as such be authorized to administer on the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration, with the will annexed, of the estate of the first testator, left unadministered, must be issued.

No executor of an executor can act

§ 4029. s 6. Where a person absent from the Territory, or a minor, is named executor, if there is another executor who accepts the trust and qualifies, the latter may have letters testamentary and administer the estate until the return of the absentee or the majority of the minor, who may then be admitted as joint executor. If there is no other executor, letters of administration, with the will annexed, must be granted; but the court may, in its discretion, revoke them on the return of the absent executor, or the arrival of the minor at the age of majority.

Letters of administration, to minor, etc. Non-resident executor, etc.

§ 4030. s 7. When all the executors named are not appointed by the court, those appointed have the same authority to perform all acts and discharge the trust required by the will as effectually for every purpose as if all were appointed, and should act together where there are two executors or administrators. The act of one alone shall be effectual if the other is absent from the Territory, or laboring under any legal disability from serving, or if he has given his co-executor or co-administrator authority in writing to act for both, and where there are more than two executors or administrators, the act of a majority is valid.

Acts of a portion of executors and administrators when valid.

§ 4031. s 8. Administrators, with the will annexed, have the same authority over the estates which executors named in the will would have, and their acts are as effectual for all purposes. Their letters must be signed by the clerk of the court, and bear the seal thereof.

Authority of administrators with will annexed. Letters, how issued

FORM OF LETTERS.

SECTION.

4032 Form of letters testamentary.
4033 Form of letters of administration, with will annexed.

SECTION.

4034 Form of letters of administration.

Form of letters testamentary. § 4032. s 9. Letters testamentary must be substantially in the following form:

Territory of Utah, {
County of—— } }

The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of——, C. D., who is named therein as such, is hereby appointed executor.

[Seal.] Witness, G. H., clerk of the probate court of the county of—— with the seal of the court affixed, the——day of—— A. D. 18—.

By order of the court.

G. H., clerk.

Form of letters of administration with will annexed. § 4033. s 10. Letters of administration, with the will annexed, must be substantially in the following form:

Territory of Utah, {
County of—— } }

The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of——, and there being no executor named in the will (or as the case may be,) C. D. is hereby appointed administrator with the will annexed.

[Seal.] Witness, G. H., clerk of the probate court of the county of——, with the seal of the court affixed, the——day of—— A. D. 18—.

By order of the court.

G. H., clerk.

Form of letters of administration. § 4034. s 11. Letters of administration must be signed by the clerk, under the seal of the court, and substantially in the following form:

Territory of Utah, {
County of——— }

C. D. is hereby appointed administrator of the estate of
A. B., deceased.

[Seal.] Witness, G. H., clerk of the probate court
 of the county of——, with the seal
 thereof affixed, the——day of——
 A. D. 18—.

By order of the court.

G. H., clerk.

LETTERS OF ADMINISTRATION, TO WHOM AND THE ORDER IN WHICH
THEY ARE GRANTED.

SECTION.	SECTION.
4035 Letters of administration, to whom and order in which granted; partner of decedent not entitled to administer.	4038 When minor entitled, who appointed administrator.
4036 Preference of persons equally entitled.	4039 Who incompetent to act as administrator.
4037 In discretion of court to appoint administrator, when.	4040 Married women not to be administratrix, when; authority may be revoked, when.

§ 4035. s 12. Administration of the estate of a person dying intestate, must be granted to some one or more of the persons hereinafter mentioned, the relatives of the deceased being entitled to administer only when they are entitled to succeed to his personal estate, or some portion thereof; and they are, respectively, entitled thereto in the following order:

1. The surviving husband or wife, or some competent person whom he or she may request to have appointed.
2. The children.
3. The father or mother.
4. The brothers or sisters.
5. The grandchildren.
6. The next of kin entitled to share in the distribution of the estate.
7. The creditors.
8. Any person legally competent.

If the decedent was a member of a partnership at the time of his decease, the surviving partner must in no case be appointed administrator of his estate.

Order of persons entitled to administer. Partner not to administer.

Preference of
persons
equally en-
titled.

§ 4036. s 13. Of several persons claiming and equally entitled to administer, relatives of the whole-blood must be preferred to those of the half-blood.

In discretion
of court to ap-
point adminis-
trator, when.

§ 4037. s 14. When there are several persons equally entitled to the administration, the court may grant letters to one or more of them; and when a creditor is claiming letters, the court may, in its discretion, at the request of another creditor, grant letters to another person legally competent.

When minor
entitled, who
appointed ad-
ministrator.

§ 4038. s 15. If any person entitled to administration is a minor, letters must be granted to his or her guardian, or any other person entitled to letters of administration, in the discretion of the court.

Who are in-
competent to
act as adminis-
trators.

§ 4039. s 16. No person is competent or entitled to serve as administrator or administratrix who is:

1. Under the age of majority.
2. Not a bona fide resident of the Territory.
3. Convicted of an infamous crime.

4. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

Married
woman not to
be adminis-
tratrix, when

§ 4040. s 17. When objection is made by any person interested in an estate, a married woman must not be appointed administratrix. When an unmarried woman appointed administratrix marries, the court or judge thereof may, upon the motion of any such interested person revoke her authority and appoint another person in her place.

Authority,
how revoked.

PETITION FOR LETTERS AND ACTION THEREON.

SECTION.

- 4041 Application, how made.
- 4042 When granted.
- 4043 Notice of application.
- 4044 Contesting application.
- 4045 Hearing of application.
- 4046 Evidence of notice

SECTION.

- 4047 Letters of administration may be granted to any applicant.
- 4048 Proofs to be made before granting letters of administration.
- 4049 Letters of administration granted to others than those entitled.

Applications,
how made.

§ 4041. s 18. Petitions for letters of administration must be in writing, signed by the applicant or his counsel, and filed with the clerk of the court, stating the facts essen-

tial to give the court jurisdiction of the case, and when known to the applicant, he must state the names, ages, and residence of the heirs of the decedent, and the value and character of the property. If the jurisdictional facts existed, but are not fully set forth in the petition, and are afterward proved in the course of administration, the decree or order of administration, and subsequent proceedings are not void on account of such want of jurisdictional averments.

§ 4042. s 19. Letters of administration may be granted When granted. by the court at any time appointed for the hearing of the application, or at any time to which the hearing is continued or postponed.

§ 4043. s 20. When a petition praying for letters of Notice of application. administration is filed, the clerk must give notice thereof by causing notices to be posted in at least three public places in the county, one of which must be at the place where the court is held, containing the name of the decedent, the name of the applicant, and the time at which the application will be heard. Such notice must be given at least ten days before the hearing.

§ 4044. s 21. Any person interested may contest the Contesting application. petition, by filing written opposition thereto on the ground of the incompetency of the applicant, or may assert his own rights to the administration, and pray that letters be issued to himself. In the latter case the contestant must file a petition and give the notice required for an original petition, and the court must hear the two petitions together.

§ 4045. s 22. On the hearing, it being first proved that Hearing of application. notice has been given as herein required, the court must hear the allegations and proofs of the parties, and order the issuing the letters of administration to the party best entitled thereto.

§ 4046. s 23. An entry in the minutes of the court, Evidence of notice. that the required proof was made and notice given, shall be conclusive evidence of the fact of such notice.

§ 4047. s 24. Letters of administration must be granted Letters of administration may be granted to any applicant. to any applicant, though it appears that there are other persons having better rights to the administration, when such persons failed to appear and claim the issuing of letters to themselves.

§ 4048. s 25. Before letters of administration are Proofs to be made before granting letters of administration. granted on the estate of any person who is represented to have died intestate, the fact of his dying intestate must be

proved by the testimony of the applicant or others, and the court may also examine any other person concerning the time, the place, and manner of his death, the place of his residence at the time, the value and character of his property and whether or not the decedent left any will, and may compel any person to attend as a witness for that purpose.

Letters may be granted to others than those entitled.

§ 4049. s 26. Administration may be granted to one or more competent persons, although not otherwise entitled to the same, at the written request of the person entitled, filed in the court.

REVOCATION OF LETTERS AND PROCEEDINGS THEREFOR.

SECTION.

4050 Revocation of letters of administration.

4051 When petition filed, citation to issue.

SECTION.

4052 Hearing petition for revocation.

4053 Prior rights of relatives entitle them to revoke prior letters.

Revocation of letters of administration.

§ 4050. s 27. When letters of administration have been granted to any other person than the surviving husband or wife, child, father, mother, brother, or sister of the intestate, any one of them who is competent, and who has not had an opportunity to apply, or any competent person at the written request of any one of them, may obtain the revocation of the letters and be entitled to the administration, by presenting to the court a petition praying the revocation and that letters of administration may be issued to him.

When petition filed citation to issue.

§ 4051. s 28. When such petition is filed the clerk must in addition to the notice provided in section 20 of this Chapter, issue a citation to the administrator to appear and answer the same at the time appointed for the hearing.

Hearing of petition for revocation.

§ 4052. s 29. At the time appointed, the citation having been duly served and returned, the court must proceed to hear the allegations and proofs of the parties; and if the petition of the applicant is established and he is competent, letters of administration must be granted to him, and the letters of the former administrator revoked.

§ 4053. s 30. The surviving husband or wife, when letters of administration have been granted to a child, father, brother, or sister, of the intestate, or any of such relatives, when letters have been granted to any other of them, may assert his prior right and obtain letters of administration and have the letters before granted revoked in the manner prescribed in the three preceding sections.

Prior rights of relatives entitles them to revoke prior letters.

OATHS AND BONDS OF EXECUTORS AND ADMINISTRATORS, ETC.

SECTION.

- 4054 Administrator or executor to take oath; letters and bond to be recorded.
- 4055 Bond of administrator, form and requirement of.
- 4056 Additional bond, when required.
- 4057 Condition of bond.
- 4058 Each executor and administrator to give separate bond.
- 4059 Several recoveries on same bond.
- 4060 Sureties on bond must justify and bond be approved.
- 4061 Bond deficient, citation; requirement of judge and additional security.
- 4062 Right ceases, when.
- 4063 Bond, when dispensed with.
- 4064 Failing sureties, petition for further bonds.

SECTION.

- 4065 Citation to executor or administrator to show cause against application.
- 4066 Further security may be required.
- 4067 Neglect to obey order.
- 4068 Suspending powers of executor or administrator.
- 4069 Further security ordered without application, when.
- 4070 Release of sureties.
- 4071 New sureties.
- 4072 Neglect to give new bond, forfeits letters, etc.
- 4073 Application for new sureties, when determined.
- 4074 Liability on bond.

§ 4054. s 31. Before letters testamentary or of administration are issued to the executor or administrator, he must take and subscribe an oath before some officer authorized to administer oaths, that he will perform, according to law, the duties of executor or administrator, which oath must be attached to the letters. All letters testamentary and of administration issued to, and all bonds executed by, executors or administrators, with the affidavits and certificates thereon, must be forthwith recorded by the clerk of the court having jurisdiction of the estates, in books to be kept by him in his office for that purpose.

Administrator or executor to take oath.

Letters and bond to be recorded.

Bond of administrators, form and requirement of.

§ 4055. s 32. Every person to whom letters testamentary or of administration are directed to issue must, before receiving them, execute a bond to the Territory of Utah, with two or more sufficient sureties, to be approved by the probate court or judge thereof. In form the bond must be joint and several, and the penalty must not be less than twice the value of the personal property, and twice the probable value of the annual rents, profits and issues of real property belonging to the estate, which values must be ascertained by the probate court, or judge thereof, by examining on oath the party applying, and any other person.

Additional bonds, when required.

§ 4056. s 33. The probate court, or judge thereof, must require an additional bond whenever the sale of any real estate belonging to an estate is ordered; but no such additional bond must be required when it satisfactorily appears to the court that the penalty of the bond given before receiving letters, or of any bond given in place thereof is equal to twice the value of the personal property remaining in or that will come into possession of the executor or administrator, including the annual rents, profits, and issues of real estate, and twice the probable amount to be realized on the sale of the real estate ordered to be sold.

Condition of bond.

§ 4057. s 34. The bond must be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law.

Each, or more than one administrator, to give separate bonds.

§ 4058. s 35. When two or more persons are appointed executors or administrators, the probate court or judge thereof must require and take a separate bond from each of them.

Several recoveries may be had on same bond.

§ 4059. s 36. The bond shall not be void upon the first recovery but may be sued and recovered upon from time to time, by any person aggrieved, in his own name, until the whole penalty is exhausted.

Sureties must justify and bonds be approved.

§ 4060. s 37. In all cases where bonds or undertakings are required to be given under this act the sureties must justify thereon in the same manner and in like amount as required in the general provisions of the Code of Civil Procedure, and the certificate thereof must be attached to and filed and recorded with the bond or undertaking. All such bonds and undertakings must be approved by the judge of the probate court before being filed or recorded.

§ 4061. s 38. Before the judge approves any bond required under this act, and after its approval, he may, of his

own motion, or upon the motion of any person interested in the estate, supported by affidavit, that the sureties, or some one or more of them, are not worth as much as they have justified to, order a citation to issue requiring such sureties to appear before him at a designated time and place, to be examined touching their property and its value, and the judge must, at the same time, cause a notice to be issued to the executor or administrator requiring his appearance on the return of the citation; and on its return he may examine the sureties and such witnesses as may be produced, touching the property of the sureties and its value; and if upon such examination, he is satisfied that the bond is insufficient, he must require sufficient additional security.

Citation and requirements of judge on deficient bond.

Additional security.

§ 4062. s 39. If sufficient security is not given within the time fixed by the judge's order, the right of such executor or administrator to the administration shall cease, and the person next entitled to the administration on the estate, who will execute a sufficient bond, must be appointed to the administration.

Right ceases, when.

§ 4063. s 40. When it is expressly provided in the will that no bond shall be required of the executor, letters testamentary may issue, and sales of real estate be made and confirmed without any bond, unless the court, for good cause, require one to be executed; but the executor may at any time afterward, if it appear from any cause necessary or proper, be required to file a bond, as in other cases.

When bond may be dispensed with

§ 4064. s 41. Any person interested in an estate may, by verified petition, represent to the probate court, that sureties of the executors or administrators thereof have become or are becoming, insolvent, or that they have removed, or are about to remove, from the Territory, or that from any other cause the bond is insufficient, and ask that further security be required.

Petition showing failure of sureties, and asking for further bonds.

§ 4065. s 42. If the probate court or judge thereof is satisfied that the matter requires investigation, a citation must be issued to the executor or administrator, requiring him to appear, at a time and place to be therein specified, to show cause why he should not give further security. The citation must be served personally on the executor or administrator, at least five days before the return day. If he has absconded, or cannot be found, it may be served by leaving a copy of it

Citation to executor, etc. to show cause against such application.

at his place of residence, or by such publication as the court or the judge thereof may order.

Further security may be ordered.

§ 4066. s 43. On the return of citation, or at such other time as the judge may appoint, he must proceed to hear the proofs and allegations of the parties. If it satisfactorily appears that the security is from any cause insufficient, he may make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form, within a reasonable time, not less than five days.

Neglecting to obey orders.

§ 4067. s 44. If the executor or administrator neglects to comply with the order within the time prescribed, the judge must by order revoke his letters, and his authority must thereupon cease.

Suspending powers of executor, etc.

§ 4068. s 45. When a petition is presented, praying that an executor or administrator be required to give further security, or to give bond, where, by the terms of the will, no bond was originally required, and it is alleged on oath that the executor or administrator is wasting the property of the estate, the judge may, by order, suspend his powers until the matter can be heard and determined.

Further security ordered without application of party in interest.

§ 4069. s 46. When it comes to his knowledge that the bond of any executor or administrator is from any cause insufficient, the judge, without any application, must cause him to be cited to appear and show cause why he should not give further security, and must proceed thereon as upon the application of any person interested.

Release of sureties.

§ 4070. s 47. When a surety of an executor or administrator desires to be released from responsibility on account of future acts, he may make application to the probate court or the judge thereof for relief. The court or judge must cause a citation to the executor or administrator to be issued, and served personally, requiring him to appear at a time and place to be therein specified, and to give other security. If he has absconded, left or removed from the Territory, or if he cannot be found after due diligence and inquiry, service may be made as provided in section 42 of this Chapter.

New sureties.

§ 4071. s 48. If new sureties be given to the satisfaction of the judge, he may thereupon make an order that the sureties who applied for relief shall not be liable on their

bond for any subsequent act, default, or misconduct of the executor or administrator.

§ 4072. s 49. If the executor or administrator neglects or refuses to give new sureties to the satisfaction of the judge, on the return of the citation, or within such reasonable time as the judge shall allow unless the surety making the application shall consent to a longer extension of time, the court or judge must by order revoke his letters.

Neglect to give, forfeiture of letters.

§ 4073. s 50. The application authorized by the nine preceding sections of this Chapter may be heard and determined at any time. All orders made therein must be entered upon the minutes of the court.

Applications to be determined at any time.

§ 4074. s 51. The liability of principal and sureties upon the bond of an executor, administrator or guardian, is in all cases to pay in the kind of money or currency in which the principal is legally liable.

Liability on bond.

SPECIAL ADMINISTRATORS, AND THEIR POWERS AND DUTIES.

SECTION.	SECTION.
4075 Special administrators, when appointed.	4078 Special administrator to give bonds and take oath.
4076 Special letters may be issued at any time.	4079 Special administrator, duties of.
4077 Preference given to person entitled to letters.	4080 Issuing letters ends power of special administrator.
	4081 Special administrator to render account.

§ 4075. s 52. When there is delay in granting letters testamentary or of administration from any cause, or when such letters are granted irregularly, or no sufficient bond is filed as required, or when no application is made for such letters, or when an executor or administrator dies, or is suspended, or removed, the probate court must appoint a special administrator to collect and take charge of the estate of the decedent in whatever county or counties the same may be found, and to exercise such other powers as may be necessary for the preservation of the estate.

Special administrator, when appointed.

Special letters
may be issued
at any time.

§ 4076. s 53. The appointment may be made at any time and without notice, and must be made by entry upon the minutes of the court specifying the powers to be exercised by the administrator. Upon such order being entered, and after the person appointed has given bond, the clerk must issue letters of administration to such person in conformity with the order.

Preference
given to per-
sons entitled
to letters.

§ 4077. s 54. In making the appointment of a special administrator, the court or judge must give preference to the person entitled to letters testamentary or of administration.

Special admin-
istrator to give
bond and take
oath.

§ 4078. s 55. Before any letters issue to any special administrator, he must give bond in such sum as the court or judge may direct, with sureties to the satisfaction of the court or judge, conditioned for the faithful performance of his duties, and he must take the usual oath and have the same indorsed on his letters.

Duties of
special admin-
istrator.

§ 4079. s 56. The special administrator must collect and preserve for the executor, or administrator, all the goods, chattels, debts, and effects of the decedent, all incomes, rents, issues and profits, claims and demands of the estate: must take the charge and management of, enter upon and preserve from damage, waste, and injury, the real estate, and for such and all necessary purposes may commence and maintain or defend suits and other legal proceedings, as an administrator; he may sell such perishable property as the court may order to be sold, and exercise such other powers as are conferred upon him by his appointment, but in no case is he liable to an action by any creditor on a claim against the decedent.

Issuing letters
testamentary
ends power of
special admin-
istrator.

§ 4080. s 57. When the letters testamentary or of administration on the estate of the decedents have been granted, the powers of the special administrator cease, and he must forthwith deliver to the executor or administrator all the property and effects of the decedent in his hands; and the executor or administrator may prosecute to final judgment any suit commenced by the special administrator.

Special admin-
istrator to ren-
der account.

§ 4081. s 58. The special administrator must render an account, on oath, of his proceedings, in a like manner as other administrators are required to do.

WILLS FOUND AFTER LETTERS OF ADMINISTRATION GRANTED, AND
MISCELLANEOUS PROVISIONS.

SECTION.

- 4082 Proof of will after letters of administration, revokes letters.
4083 Power of executor in such a case.
4084 Remaining executor or administrator to continue duties.
4085 Who to act when executors or administrators incapable or die.

SECTION.

- 4086 Executor or administrator may resign, when; successor; liability of outgoer.
4087 All acts of executor or administrator prior to revocation of letters, valid.
4088 Transcript of court minutes, evidence.

§ 4082. s 59. If after granting letters of administration on the ground of intestacy, a will of the decedent is duly proved and allowed by the court, the letters of administration must be revoked and the power of the administrator ceases, and he must render an account of his administration within such time as the court shall direct.

On proof of will, after letters of administration, letters revoked.

§ 4083. s 60. In such case the executor or administrator, with the will annexed, is entitled to demand, sue for, recover and collect all rights, goods, chattels, debts and effects of the decedent remaining unadministered, and may prosecute to final judgment, any suit commenced by the administrator before the revocation of his letters of administration.

Power of executor in such a case

§ 4084. s 61. In case any one of several executors or administrators, to whom letters are granted, dies, becomes lunatic, is convicted of an infamous crime, or otherwise becomes incapable of executing the trust, or in case the letters testamentary or of administration are revoked or annulled, with respect to any one executor or administrator, the remaining executor or administrator must proceed to complete the execution of the will or administration.

Remaining administrator or executor to continue when his colleagues are disqualified.

§ 4085. s 62. If all such executors or administrators die or become incapable, or the power and authority of all of them is revoked, the court must issue letters of administration, with the will annexed, or otherwise, to the widow or next of kin, or others, in the same order and manner as is directed in relation to original letters of administration. The administrator so appointed must give bond in the like penalty,

Who to act when all acting are incompetent.

with like sureties and conditions, as hereinbefore required of administrators, and shall have the like power and authority.

Executor or administrator may resign, when.

§ 4086. s 63. Any executor or administrator, may, at any time, by writing filed in the probate court, resign his appointment, having first settled his accounts and delivered up the estate to the person whom the court shall appoint to receive the same. If, however, by reason of any delays in any such settlement and delivering up of the estate, or for any other cause, the circumstances of the estate or the rights of those interested therein require it, the court may, at any time before settlement of accounts and delivering up of the estate is completed, revoke the letters of such executor or administrator, and appoint in his stead an administrator, either special or general, in the same manner as is directed in relation to original letters of administration. The liability of the outgoing executor or administrator, or of the sureties on his bond, shall not be in any manner discharged, released or affected by such appointment or resignation.

Court to appoint successor. Liability of outgoer.

All acts of executor, etc., valid until his power is revoked.

§ 4087. s 64. All acts of an executor or administrator, as such before the revocation of his letters testamentary, or of administration, are as valid to all intents and purposes as if such executor or administrator had continued lawfully to execute the duties of his trust.

Transcript of court minutes to be evidence.

§ 4088. s 65. A transcript from the minutes of the court showing the appointment of any person as executor or administrator, together with the certificate of the clerk, under his hand and the seal of his court, that such person has given bond and been qualified, and that letters testamentary or of administration have been issued to him and have not been revoked, shall have the same effect in evidence as the letters themselves.

DISQUALIFICATION OF JUDGES AND TRANSFERS OF ADMINISTRATION.

SECTION.

4089 Judge, when not to act.

4090 Judge disqualified, proceedings to be transferred, how.

SECTION.

4091 Transfer does not change right to administer.

4092 Proceedings transferred back to original court, when.

§ 4089. s 66. No will shall be admitted to probate, or letters testamentary or of administration granted, before any judge who is interested as next of kin to the decedent, or as a legatee or devisee under the will, or when he is named as executor or trustee in the will, or is a witness thereto, or is in any other manner interested or disqualified from acting.

When judge not to act

§ 4090. s 67. When a petition is filed in the probate court, praying for admission to probate of a will or for granting letters testamentary or of administration, or when proceedings are pending in the probate court for the settlement of an estate, and the judge of said court is disqualified from acting, an order must be made transferring the proceeding to the probate court of an adjoining county, and the clerk of the court ordering the transfer must transmit to the clerk of the court to which the proceeding is ordered to be transferred, a certified copy of the order, and all the papers on file in his office in the proceeding; and thereafter the court to which the proceeding is transferred shall exercise the same authority and jurisdiction over the estate, and all matters relating to the administration thereof, as if it had original jurisdiction of the estate.

Judge being disqualified, proceedings to be transferred, and where.

§ 4091. s 68. The transfer of a proceeding from one court to another, as provided for in the preceding section, shall not affect the right of any person to letters testamentary or of administration on the estate transferred, but the same persons are entitled to letters testamentary or of administration on the estate, in the order hereinbefore provided. If, before the administration is closed of any estate so transferred as herein provided, another person is elected or appointed, and qualified as judge of the court wherein such proceeding was originally commenced, who is not disqualified to act in

Transfer not to change right to administer. Re transfer, how made.

settlement of the estate, and the causes for which the proceeding was transferred no longer exist, any person interested in the estate may have the proceeding returned to the court from which it was originally transferred, by filing a petition setting forth these facts, and moving the court therefor.

When proceedings to be returned to original court.

§ 4092. s 69. On hearing the motion, if the facts required by the preceding section to be set out in the petition are satisfactorily shown, and it further appears to the court that the convenience of parties interested would be promoted by such change, the judge must make an order transferring the proceeding back to the court where it was originally commenced; and the clerk of the court ordering the transfer must transmit to the clerk of the court in which the proceeding was originally commenced, a certified copy of the order, and all the original papers on file in his office in the proceeding; and the court where the proceeding was originally commenced shall thereafter have jurisdiction and power to make all necessary orders and decrees to close up the administration of the estate.

REMOVALS AND SUSPENSIONS IN CERTAIN CASES.

SECTION.

4093 Suspension of powers of administrator or executor.
4094 Executor or administrator to have notice and to be cited to appear.

SECTION.

4095 Any party interested may appear at hearing.
4096 Notice to absconding executor or administrator.
4097 May compel attendance by attachment.

Suspension of powers of executor.

§ 4093. s 70. Whenever the judge of the probate court has reason to believe, from his own knowledge, or from credible information, that any executor or administrator has wasted, embezzled, or mismanaged, or is about to waste, or embezzle the property of the estate committed to his charge, or has committed or is about to commit a fraud upon the estate, or is incompetent to act, or has permanently removed from the Territory, or has wrongfully neglected the estate,

or who has long neglected to perform any act as such executor or administrator, he must, by an order entered upon the minutes of the court, suspend the powers of such executor or administrator, until the matter is investigated.

§ 4094. s 71. When such suspension is made, notice thereof must be given to the executor or administrator and he must be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or, if appearing, the court is satisfied that there exists cause for his removal, his letters must be revoked, and letters of administration granted anew as the case may require.

§ 4095. s 72. At the hearing any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed; to which the executor or administrator may demur or answer, as hereinbefore provided. The issues raised must be heard and determined by the court.

§ 4096. s 73. If the executor or administrator has absconded or conceals himself, or has removed or absented himself from the Territory, notice may be given him of the pendency of the proceedings by publication, in such manner as the court may direct, and the court may proceed upon such notice as if the citation had been personally served.

§ 4097. s 74. In the proceedings authorized by the four preceding sections for the removal of an executor or administrator, the court may compel his attendance by attachment and may compel him to answer questions on oath touching his administration, and, upon his refusal so to do, may commit him until he obey, or may revoke his letters, or both.

CHAPTER IV.

OF THE INVENTORY AND COLLECTION OF THE EFFECTS OF DECEDENTS.

SECTION.	SECTION.
4098 Inventory to be returned including the homestead.	4104 Inventory to be signed by appraisers and sworn to by executor or administrator.
4099 Appraisalment and pay of appraisers.	4105 Letters may be revoked for negligence of executor or administrator.
4100 Oath of appraisers; inventory, how made.	4106 After-discovered property must be inventoried.
4101 Inventory to account for money; if all money, no appraisalment.	4107 Real and personal property, possession of by executor or administrator.
4102 Debtor named executor, no discharge of his debt.	4108 When executor or administrator to deliver possession of real estate to heirs, etc.
4103 Discharge or bequest of debt against executor, effect of.	

Inventory to be returned, including the homestead.

§ 4098. s 1. Every executor or administrator must make and return to the court, within three months after his appointment, a true inventory and appraisalment of all the estate of the decedent, including the homestead, if any, which has come to his possession or knowledge.

Appraisalment and pay of appraisers.

§ 4099. s 2. To make the appraisalment, the court or the judge thereof, must appoint three disinterested persons, (any two of whom may act) who are entitled to receive a reasonable compensation for their services, not to exceed five dollars per day, to be allowed by the court or judge. The appraisers must, with the inventory, file a verified account of their services and disbursements. If any part of the estate is in any other county than that in which letters issued, appraisers thereof may be appointed, either by the court or judge having jurisdiction of the estate, or by the court or judge of such other county, on request of the court or judge having jurisdiction.

Oath of appraisers and inventory, how made.

§ 4100. s 3. Before proceeding to the execution of their duty, the appraisers, before any officer authorized to administer oaths, must take and subscribe an oath, to be attached to the inventory, that they will truly, honestly, and impartially appraise the property exhibited to them according to the best of their knowledge and ability; they must then proceed to

estimate and appraise the property; each article must be set down separately, with the value thereof in dollars and cents, in figures, opposite the articles, respectively; the inventory must contain all the estate of the decedent, real and personal, a statement of all debts, partnerships, and other interests, bonds, mortgages, notes, and other securities, for the payment of money belonging to the decedent, specifying the name of the debtor in each security, the date, the sum originally payable, the endorsements thereon, if any, with their dates, and the sum which, in the judgment of the appraisers, may be collected on each debt, interest, or security; the inventory must show, so far as the same can be ascertained by the executor, or the administrator, what portion of the property is community property, and what portion is the separate property of the decedent.

§ 4101. s 4. The inventory must also contain an account of all moneys belonging to the decedent which have come to the hands of the executor or administrator; and if none, the fact must be so stated in the inventory. If the whole estate consists of money, there need not be an appraisement, but an inventory must be made and returned as in other cases.

Inventory to account for moneys. If all money, no appraisement necessary.

§ 4102. s 5. The naming of a person as executor does not thereby discharge him from any just claim which the testator has against him, but the claim must be included in the inventory, and the executor is liable for the same, as for so much money in his hands, when the debt or demand becomes due.

Naming a debtor executor, does not discharge the debt

§ 4103. s 6. The discharge or bequest in a will of any debt or demand of the testator against the executor named, or any other person, is not valid against the creditors of the decedent but is a specific bequest of the debt or demand. It must be included in the inventory, and if necessary, applied in the payment of the debts. If not necessary for that purpose, it must be paid in the same manner and proportion as other specific legacies.

Discharge or bequest of debt against executor.

§ 4104. s 7. The inventory must be signed by the appraisers, and the executor or administrator must take and subscribe an oath before an officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the decedent which has come to his knowledge and possession, and particularly of all money belonging to the decedent and of all just claims of the decedent against the

To make oath to inventory.

affiant. The oath must be indorsed upon or annexed to the inventory.

Letters may be
revoked for
neglect of ad-
ministrator.

§ 4105. s 8. If an executor or administrator neglects or refuses to return the inventory within the time prescribed, or within such further time, not exceeding two months, which the court or judge shall for reasonable cause allow, the court may, upon notice, revoke the letters testamentary or of administration, and the executor or administrator is liable on his bond for any injury to the estate, or any person interested therein, arising from such failure.

Inventory of
after discov-
ered property.

§ 4106. s 9. Whenever property not mentioned in an inventory that is made and filed, comes to the possession or knowledge of an executor or administrator, he must cause the same to be appraised in the manner prescribed in this Chapter, and an inventory thereof to be returned within two months after the discovery; and the making of such inventory may be enforced, after notice, by attachment or removal from office.

Administrator
or executor to
possess real
and personal
estate.

§ 4107. s 10. The executor or administrator is entitled to the possession of all the real and personal estate of the decedent, and to receive the rents and profits of the real estate until the estate is settled, or until delivered over by order of the court to the heirs or devisees; and must keep in good tenantable repair all houses, buildings and fixtures thereon which are under his control. The heirs or devisees may themselves, or jointly with the executor or administrator, maintain an action for the possession of the real estate or for the purpose of quieting title to the same, against any one except the executor or administrator: but this section shall not be so construed as requiring them so to do.

When admin-
istrator to de-
liver posses-
sion of all real
estate to heirs,
etc.

§ 4108. s 11. Unless it satisfactorily appear to the court that the rents, issues and profits of the real estate for a longer period are necessary to be received by the executor or administrator, wherewith to pay the debts of the deceased, or that it will probably be necessary to sell the real estate for the payment of such debts, the court, at the end of the time limited for the presentation of the claims against the estate, must direct the executor or administrator to deliver possession of all the real estate to the heirs-at-law or devisees.

EMBEZZLEMENT AND SURRENDER OF PROPERTY OF THE ESTATE.

SECTION.

4109 Embezzling estate before grant-
ing letters.
4110 Citation to persons suspected to
have embezzled estate.

SECTION.

4111 Refusal to obey citation, penalty
for, and for embezzlement, etc.
4112 Persons entrusted with estate
of decedent may be cited to
account.

§ 4109. s 12. If any person, before the granting of let-
ters testamentary or of administration, embezzles or alienates
any of the goods, chattels, or effects of a decedent, he is
chargeable therewith and liable to an action by the executor
or administrator of the estate, for double the value of the
property so embezzled or alienated, to be recovered for the
benefit of the estate.

Embezzling
estate before
grant of letters
testamentary.

§ 4110. s 13. If any executor, or administrator, or other
person interested in the estate of a decedent, complains to the
probate court or the judge thereof, on oath, that any person
is suspected to have concealed, embezzled, smuggled, convey-
ed away, or disposed of any moneys, goods or chattels of the
decedent, or has in his possession or knowledge any deeds,
conveyances, bonds, contracts, or other writings, which con-
tain evidences of or tend to disclose the right, title, interest,
or claim of the decedent to any real or personal estate, or any
claim or demand, or any lost will, the said court or judge
may cite such person to appear before such court, and may
examine him on oath, upon the matter of such complaint. If
such person is not in the county where the decedent dies, or
where letters have been granted, he may be cited and exam-
ined either before the probate court of the county where he
is found or before the probate court of the county where the
decedent dies, or where letters have been granted. But if,
in the latter case, he appears and is found innocent, his nec-
essary expenses must be allowed him out of the estate.

Citation to per-
son suspected
to have embez-
zled estate,
etc.

§ 4111. s 14. If the person so cited refuses to appear
and submit to an examination, or to answer such interroga-
tories as may be put to him, touching the matters of the com-
plaint, the court may, by warrant for that purpose, commit

Refusal to
obey citation,
penalty for,
and for embez-
zlement, etc.

him to the county jail, there to remain in close custody until he submits to the order of the court, or is discharged according to law. If, upon such examination, it appears that he has concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the decedent, or that he has in his possession or knowledge, any deed, conveyances, bonds, contracts, or other writings containing evidences of or tending to disclose the right, title, interest, or claim of the decedent to any real or personal estate, claim, or demand or any lost will of the decedent, the court may make an order requiring such person to disclose his knowledge thereof to the executor or administrator, and may commit him to the county jail, there to remain until the order is complied with, or he is discharged according to law; and all such interrogatories and answers must be in writing, signed by the party examined, and filed in the court. The order for such disclosure made upon such examination shall be *prima facie* evidence of the right of the executor or administrator to such property in an action brought in a court of competent jurisdiction for the recovery thereof; and any judgment recovered therein must be for double the value of the property as assessed by the court or jury, or for return of the property and damages in addition thereto, equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side.

Persons entrusted with estate of decedent may be cited to account.

§ 4112, § 15. The probate court or judge thereof, upon the complaint, on oath, of any executor or administrator, may cite any person who has been intrusted with any part of the estate of the decedent to appear before such court, and require him to render a full account, on oath, of any moneys, goods, chattels, bonds, accounts or other property or papers belonging to the estate, which have come to his possession in trust for the executor or administrator, and of his proceedings thereon; and if the person so cited refuses to appear and render such account, the court may proceed against him as provided in the preceding section.

CHAPTER V.

OF THE PROVISIONS FOR THE SUPPORT OF THE FAMILY AND OF THE
HOMESTEAD.

SECTION.

- 4113 Widow and minor children entitled to remain in homestead, how long; wearing apparel; household furniture; provision for support.
- 4114 Property exempt from execution set apart for family use.
- 4115 Allowance, extra, when made.
- 4116 Payment of allowance.

SECTION.

- 4117 Property set apart, how apportioned between widow and children.
- 4118 When estate goes to widow and children, summary administration.
- 4119 When all property goes to the children.

§ 4113. s 1. When a person dies, leaving a widow, or minor children, the widow or children, until letters are granted and the inventory is returned, are entitled to remain in possession of the homestead, of all the wearing apparel of the family, and of all the household furniture of the decedent, and are also entitled to a reasonable provision for their support, to be allowed by the probate court or the judge thereof.

Widow and minor children may remain in decedent's house, etc.

§ 4114. s 2. Upon the return of the inventory, or at any subsequent time during the administration, the court may, on its own motion, or on petition therefor, set apart for the use and support of the widow and minor children of the decedent, if there be a widow and minor children, and if no widow, then for the children, if there be any, and if no children, then for the widow, all the property of the decedent, exempt from execution.

Property exempt to be set apart for use of family. March 8, 1888.

§ 4115. s 3. If the amount set apart be insufficient for the support of the widow and children, or either, the court must make such reasonable allowance out of the estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate, which, in case of an insolvent estate, must not be longer than one year after granting letters testamentary or of administration.

May make extra allowance.

§ 4116. s 4. Any allowance made by the court, in accordance with the provisions of this Chapter, must be paid in preference to all other charges, except funeral charges and

Payment of allowance.

expenses of administration; and any such allowances whenever made, may, in the discretion of the court, or judge, take effect from the death of the decedent.

Property set
apart, how ap-
portioned.
March 8, 1888.

§ 4117. s 5. When property is set apart in accordance with the provisions of the preceding sections of this Chapter, if the decedent left a widow and no minor child, such property is the property of the widow. If the decedent left also a minor child or children, the one-half of such property shall belong to the widow, and the remainder to the child, or in equal shares to the children, if there be more than one. If there be no widow, the whole belongs to the minor child or children.

When estate to
go to wife and
child, when to
be summarily
administered.

§ 4118. s 6. If, upon the return of the inventory of the estate of a deceased person, it shall appear therefrom that the value of the whole estate does not exceed the sum of fifteen hundred dollars, and if there be a widow or minor children of the decedent, the court or the judge thereof, shall, by order, require all persons interested to appear on a day fixed, to show cause why the whole of said estate should not be assigned for the use and support of the family of the decedent. Notice thereof shall be given and proceedings had in the same manner as provided in sections 19, 21, and 24, Chapter X., of this act. If, upon the hearing, the court finds that the value of the estate does not exceed the sum of fifteen hundred dollars, it shall, by a decree for that purpose, assign for the use and support of the widow and minor children; if there be a widow and minor children, and if no widow, then for the children, if there be any, and if no children, then for the widow, the whole of the estate after the payment of the expenses of last illness of the deceased, funeral charges, and expenses of administration, and there must be no further proceedings in the administration, unless further estate be discovered; *Provided*, That the title to all property assigned under the provisions of this section, shall rest absolutely and equally in the persons to whom such property has been assigned.

When all prop-
erty to go to
children.
March 8, 1888.

§ 4119. s 7. If the widow has a maintenance derived from her own property equal to the portion set apart to her by the preceding sections of this Chapter, the whole property so set apart, other than the homestead, must go to the minor children. (1)

CHAPTER VI.

OF CLAIMS AGAINST THE ESTATE.

SECTION.

4120 Notice to creditors by administrator or executor, to present claims, etc.

4121 Time expressed in the notice, ten or four months.

4122 Copy and proof of notice to be filed; order of court thereon.

4123 Time within which claims against estate must be presented.

4124 Claims must be sworn to and when allowed bear interest.

4125 Probate judge may present claim and action thereon.

4126 Allowance and rejection of claims.

4127 Approved claims or copies to be filed; claims secured by liens may be so described; when claim is founded on written instrument, copy to accompany claim, etc.; original to be exhibited unless lost, etc.

4128 Rejected claims to be sued for within three months after rejection.

4129 Claims barred by statute of limitations, to be disallowed; when and where judge will hear evidence on proof of claim.

4130 Claims must be presented, or no action can be had, except to foreclose mortgage, etc., and how.

SECTION.

4131 Time, limitations herein prescribed; vacancy in administration excluded.

4132 Claims in actions pending at time of death of decedent.

4133 Claim, allowance in part.

4134 Judgment against executor or administrator, effect of.

4135 No execution to issue after death but if issued and levied before death, property may be sold; judgment for money against decedent must be presented for allowance like other claims.

4136 Judgment against deceased, when not a lien.

4137 Doubtful claims may be referred how; effect of referee's decision.

4138 Referee's powers; report to the court; confirmation, etc.

4139 Liability of executor or administrator for costs, etc.

4140 Claims of executor or administrator against the estate.

4141 Executor or administrator neglecting to give notice to creditors; court must revoke letters and appoint some other person in his stead.

4142 Executor or administrator to return statement of claims, when.

4143 Interest-bearing debts may be paid without presentation of claim, how and when.

§ 4120. s 1. Every executor or administrator must immediately after his appointment, cause to be published in some newspaper of the county, if there be one, if not, then in such newspaper as may be designated by the court, a notice to the creditors of the decedent, requiring all persons having claims against him to exhibit them, with the necessary vouchers, to the executor or administrator, at the place of his residence or business, to be specified in the notice; such

Notice to
creditors.
Additional
notice.

notice must be published as often as the judge or court shall direct, but not less than once a week for four weeks; the court or judge may also direct additional notice by publication or posting. In case such executor or administrator resigns, or is removed, before the time expressed in the notice, his successor must give notice only for the unexpired time allowed for such presentation.

Time expressed in notice ten or four months.
March 8, 1888

§ 4121. s 2. The time expressed in the notice must be ten months after its first publication when the estate exceeds in value the sum of three thousand dollars, and four months when it does not.

Copy and proof of notice to be filed and order made.

§ 4122. s 3. Within thirty days after the notice is given, as required by the preceding section, a copy thereof, with the affidavit of due publication, or of publication and posting, must be filed, and upon such affidavit or other testimony to the satisfaction of the court, an order or decree showing that due notice to creditors has been given, and directing that such order or decree be entered in the minutes and recorded, must be made by the court.

Time within which claims against an estate must be presented.

§ 4123. s 4. All claims arising upon contracts, whether the same be due, not due or contingent, must be presented within the time limited in the notice, and any claim not so presented is barred forever; *Provided however*, That when it is made to appear by the affidavit of the claimant, to the satisfaction of the court, or judge thereof, that the claimant had no notice as provided in this Chapter, by reason of being out of the Territory, it may be presented at any time before a decree of distribution is entered.

Claims to be sworn to, and when allowed to bear interest

§ 4124. s 5. Every claim which is due, when presented to the executor or administrator, must be supported by the affidavit of the claimant, or some one in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant. If the claim be not due when presented, or be contingent, the particulars of such claim must be stated. When the affidavit is made by a person other than the claimant, he must set forth in the affidavit the reason why it is not made by the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers or proofs to be produced in support of the claim. If the estate be insolvent, no greater rate of interest shall be

allowed upon any claim after the first publication of notice to creditors than is allowed on judgments obtained in the courts of this Territory.

§ 4125. s 6. The judge of the probate court may present a claim against the estate of a decedent for allowance to the executor or administrator thereof, and if the executor or administrator allows the claim, he must in writing designate the judge of the probate court of an adjoining county, who upon the presentation of such claim to him, is vested with power to allow or reject it, and the judge presenting such claim, in case of its rejection by the executor or administrator, or by such judge as shall have acted upon it, has the same right to sue in a proper court for its recovery as other persons have when their claims against an estate are rejected.

Probate judge may present claim, and action thereon.

§ 4126. s 7. When a claim, accompanied by the affidavit required in this Chapter, is presented to the executor or administrator, he must endorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it must be presented to the judge of the probate court for his approval, who must in the same manner indorse upon it his allowance or rejection. If the executor or administrator, or the judge, refuse or neglect to endorse such allowance or rejection for ten days after the claim has been presented to him, such refusal or neglect may, at the option of the claimant, be deemed equivalent to a rejection on the tenth day; and if the presentation be made by a notary, the certificate of such notary under seal, shall be *prima facie* evidence of such presentation and the date thereof. If the claim be presented to the executor or administrator before the expiration of the time limited for the presentation of claims, the same is presented in time, though acted upon by the executor or administrator, and by the judge, after the expiration of such time. If the claim be payable in a particular kind of money or currency, it shall, if allowed, be payable only in such money or currency.

Allowance and rejection of claims.

§ 4127. s 8. Every claim allowed by the executor or administrator and approved by the judge of the probate court, or a copy thereof, as hereinafter provided, must, within thirty days thereafter, be filed in the court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration. If the claim be founded on a bond, bill, note or any other instrument, a copy of such in-

Approved claims or copies, to be filed; claims secured by lien, may be so described.

When claim is founded on written instrument copy to accompany claim; original to be exhibited unless lost.

instrument must accompany the claim, and the original instrument must be exhibited, if demanded, unless it be lost or destroyed, in which case the claimant must accompany his claim by his affidavit, containing a copy or particular description of such instrument, and stating its loss or destruction. If the claim, or any part thereof, be secured by a mortgage or other lien which has been recorded in the office of the recorder of the county in which the land affected by it lies, it shall be sufficient to describe the mortgage or lien, and refer to the date, volume and page of its record. If, in any case, the claimant has left any original voucher in the hands of the executor or administrator, or suffered the same to be filed in court, he may withdraw the same when a copy thereof has been already, or is then, attached to his claim. A brief description of every claim filed must be entered by the clerk in the register, showing the name of the claimant, the amount and character of the claim, rate of interest and date of allowance.

Rejected claims to be sued for within three months.

§ 4128. s 9. When a claim is rejected, either by the executor or administrator, or the judge of the probate court, the holder must bring suit in the proper court against the executor or administrator within three months after the date of its rejection, if it be then due, or within two months after it becomes due, otherwise the claim shall be forever barred.

Claim barred by statute of limitation to be disallowed. When and where judge will hear proof of claim.

§ 4129. s 10. No claim must be allowed by the executor or administrator, or the judge of the probate court, which is barred by the statute of limitations. When a claim is presented to the judge for his allowance, he may, in his discretion, examine the claimant and others on oath, and hear any legal evidence touching the validity of the claim.

Claims must be presented before suit.

§ 4130. s 11. No holder of any claim against an estate shall maintain any action thereon unless the claim is first presented to the executor or administrator, except in the following case: An action may be brought by any holder of a mortgage or lien to enforce the same against the property of the estate subject thereto, where all recourse against any other property of the estate is expressly waived in the complaint; but no counsel fees shall be recovered in such action unless such claim be so presented.

Time of limitation.

§ 4131. s 12. The time during which there shall be a vacancy in the administration must not be included in any limitation herein prescribed.

§ 4132. s 13. If an action is pending against the decedent at the time of his death, the plaintiff must in like manner present his claim to the executor or administrator for allowance or rejection, authenticated as required in other cases; and no recovery shall be had in the action unless proof be made of the presentations required.

Claims in action pending at time of decedent's death.

§ 4133. s 14. Whenever any claim is presented to an executor or administrator, or the judge, and he is willing to allow the same in part, he must state in his endorsement the amount he is willing to allow. If the creditor refuse to accept the amount allowed in satisfaction of his claim, he shall recover no costs in any action therefor brought against the executor or administrator, unless he recover a greater amount than that offered to be allowed.

Allowance of claim in part.

§ 4134. s 15. A judgment rendered against an executor or administrator, upon any claim for money against the estate of his testator or intestate, only establishes the claim in the same manner as if it had been allowed by the executor or administrator and the judge; and the judgment must be that the executor or administrator pay, in due course of administration, the amount ascertained to be due. A certified transcript of the original docket of the judgment must be filed among the papers of the estate in court. No execution must issue upon such judgment, nor shall it create any lien upon the property of the estate, or give to the judgment creditor any priority of payment.

Effect of judgment against executor.

§ 4135. s 16. When any judgment has been rendered for or against the testator or intestate, in his lifetime, no execution shall issue thereon after his death, except as provided in the Code of Civil Procedure relative to executions. Judgment against the decedent for the recovery of money must be presented to the executor or administrator like any other claim. If execution is actually levied upon any property of the decedent before his death, the same may be sold for the satisfaction thereof, and the officer making the sale must account to the executor or administrator for any surplus in his hands. A judgment creditor having a judgment which was rendered against the testator or intestate in his lifetime may redeem any real estate of the decedent from any sale under foreclosure or execution, in like manner and with like effect as if the judgment debtor were still living.

Execution not to issue after death. If one is levied the property may be sold.

What judgment is not a lien, etc.

§ 4136. s 17. A judgment rendered against a decedent dying after a verdict or decision on an issue of fact, but before judgment is rendered thereon, is not a lien on the real property of the decedent, but is payable in due course of administration.

May refer doubtful claims.

§ 4137. s 18. If the executor or administrator doubts the correctness of any claim presented to him, he may enter into an agreement in writing, with the claimant to refer the matter in controversy to some disinterested person to be approved by the probate court or judge. Upon filing the agreement and approval of the probate court or judge in the office of the clerk of the court for the county in which the letters testamentary or of administration were granted, the clerk must enter a minute of the order referring the matter in controversy to the person so selected, or if the parties consent a reference may be had in the court and the report of the referee, if confirmed, establishes or rejects the claim the same as if it had been allowed or rejected by the executor or administrator and judge.

Effect of references' allowance or rejection.

Trial by referee, powers of; to report to the court, confirmation or rejection of report, removal of.

§ 4138. s 19. The referee must hear and determine the matter, and make his report thereon to the court in which his appointment is entered. The same proceedings shall be had in all respects, and the referee shall have the same powers, be entitled to the same compensation, and subject to the same control as in other cases of reference. The court may remove the referee, appoint another in his place, set aside or confirm his report and adjudge costs as in actions against executors or administrators, and the judgment of the court thereon shall be as valid and effectual in all respects as if the same had been rendered in a suit commenced by ordinary process.

Liability of executor, etc., for costs.

§ 4139. s 20. When a judgment is recovered, with costs, against any executor or administrator, he shall be individually liable for such costs, but they must be allowed him in his administration accounts, unless it appears that the suit or proceeding in which the costs were taxed was prosecuted or defended without just cause.

Claims of executor, etc., against the estate.

§ 4140. s 21. If the executor or administrator is a creditor of the decedent, his claim, duly authenticated by affidavit, must be presented for allowance or rejection to the judge of the probate court, and its allowance by the judge is sufficient evidence of its correctness, and must be paid as

other claims in due course of administration. If, however, the judge reject the claim, action thereon may be had against the estate by the claimant, and summons must be served upon the judge, who may appoint an attorney, at the expense of the estate, to defend the action. If the claimant recover no judgment, he must pay all costs, including defendant's reasonable attorney's fees, to be fixed by the court.

§ 4141. s 22. If an executor or administrator neglects, for two months after his appointment, to give notice to creditors, as prescribed by this Chapter, the court must revoke his letters, and appoint some other person in his stead, equally or the next in order entitled to the appointment.

Executor neglecting to give notice to creditors, etc.

§ 4142. s 23. At the time at which he is required to return his inventory, the executor or administrator must also return a statement of all claims against the estate which have been presented to him, if so required by the court, or judge, and from time to time thereafter he must present a statement of claims subsequently presented to him, if so required by the court or judge. In all such statements he must designate the names of the creditors, the nature of each claim, when it became due, or will become due, and whether it was allowed or rejected by him.

Executor to return statement of claims.

§ 4143. s 24. If there be any debt of the decedent bearing interest, whether presented or not, the executor or administrator may, by order of the court, pay the amount then accumulated and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether said claim be then due or not: and interest shall thereupon cease to accrue upon the amount so paid. This section does not apply to existing debts, unless the creditor consent to accept the amount.

Interest-bearing debt may be paid without presentation of claim.

CHAPTER VII.

OF SALES AND CONVEYANCES OF PROPERTY OF DECEDENTS.

SECTION.

SECTION.

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| 4144 No priority between personal and real estate. | 4146 Application for order of sale, how made. |
| 4145 No sale valid except by order of court, except, etc.; sales, how reported. | 4147 But one petition only and sale where possible. |

No priority between personal and real property.

§ 4144. s 1. All the property of a decedent shall be chargeable with the payment of the debts of the deceased, the expenses of administration, and the allowance to the family, except as otherwise provided in this act. And the said property, personal and real, may be sold as the court may direct, in the manner prescribed in this Chapter. There shall be no priority as between personal and real property for the above purposes.

No sales valid except by order of court.

§ 4145. s 2. No sale of any property of an estate of a decedent is valid unless made under order of the probate court, except as otherwise provided in this Chapter. All sales must be reported under oath to and confirmed by the court before the title to the property sold passes.

Applications for order of sale.

§ 4146. s 3. All petitions for orders of sale must be in writing, setting forth the facts showing the sale to be necessary and, upon hearing, any person interested in the estate may file his written objections, which must be heard and determined. A failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceedings, if the defects be supplied by the proofs at the hearing, and the general facts showing the necessity be stated in the order directing the sale.

But one petition, order and sale must be had when possible.

§ 4147. s 4. When it appears to the court that the estate is insolvent, or that it will require a sale of all the property of the estate of every character, to pay the family allowance, expenses of administration, and debts, there need be but one petition filed, but one order of sale made, and but one sale had, except in the case of perishable property, which may be

sold as provided in section 5 of this Chapter. The court, when a petition for the sale of any property for any of the purposes herein named is presented, must inquire fully into the probable amount required to make all such payments, and if there be no more estate than sufficient to pay the same, may require but one proceeding for the sale of the entire estate; in such case the petition must set forth substantially the facts required by section 16 of this Chapter.

SALES OF PERSONAL PROPERTY.

SECTION.

- 4148 Perishable and depreciating property to be sold.
 4149 Rules of sale of personal property.
 4150 Partnership property; choses in action, how sold.

SECTION.

- 4151 Order of sale, what to direct and what property first sold.
 4152 Sale of personal property, how made.

§ 4148. s 5. At any time after receiving letters, the executor, administrator or special administrator, may apply to the court or judge and obtain an order to sell perishable and other personal property likely to depreciate in value, or which will incur loss or expense by being kept, and so much other personal property as may be necessary to pay the allowance made to the family of the decedent. The order for the sale may be made without notice, but the executor, administrator or special administrator is responsible for the property, unless after making a sworn return, and on a proper showing, the court shall approve the sale.

Perishable and depreciating property to be sold.

§ 4149. s 6. If claims against the estate have been allowed and a sale of property is necessary for their payment, or for the expenses of administration, or for the payment of legacies, the executor or administrator may apply for an order to sell so much of the personal property as may be necessary therefor. Upon filing his petition, notice of at least five days must be given of the hearing of the application, either by posting notices, or by advertising. He may also make a similar application from time to time so long as

Order to sell personal property.

any personal property remains in his hands and sale thereof is necessary. If it appears for the best interests of the estate, he may at any time after filing the inventory, in like manner, and after giving like notice, apply for and obtain an order to sell the whole of the personal property belonging to the estate, whether necessary to pay debts or not.

Partnership
interests and
choses in
action, how
sold.

§ 4150. § 7. Partnership interests or interests belonging to any estate by virtue of any partnership formerly existing, interests in personal property pledged, and choses in action, may be sold in the same manner as other personal property, when it appears to be for the best interests of the estate. Before confirming the sale of any partnership interests, whether made to the surviving partner or to any other person, the court or judge must carefully inquire into the condition of the partnership affairs and must examine the surviving partner, if in the county and able to be present in court.

Order of sale,
what to direct
and what to be
first sold.

§ 4151. § 8. If it appears that the sale is necessary for the payment of debts or the family allowance, or for the best interests of the estate and the persons interested in the property to be sold, whether it is or is not necessary to pay the debts or family allowance, the court or judge must order it to be made. In making orders and sales for the payment of debts or family allowance, such articles as are not necessary for the support and subsistence of the family of the decedent, or not specially bequeathed, must be first sold, and the court or judge must so direct.

Sale of per-
sonal prop-
erty.

§ 4152. § 9. The sale of personal property must be made at public auction for such money or currency as the court may direct, and after public notice given for at least ten days by notices posted in three public places in the county, or by publication in a newspaper, or both, containing the time and place of sale, and a brief description of the property to be sold, unless for good reason shown, the court, or judge, orders a private sale or a shorter notice. Public sales of such property must be made at the court house door, or at the residence of the decedent, or at some other public place; but no sale shall be made of any personal property which is not present at the time of sale, unless the court otherwise orders.

SUMMARY SALES OF MINES AND MINING PROPERTY.

SECTION.

SECTION.

- 4153 Mines or interest in mines, may be sold, when and how.
 4154 Petition for sale, who may make, and what to contain.
 4155 Order to show cause, how made, what notice.

- 4156 Order of sale, when and how made.
 4157 Further proceedings to conform to provisions of this Chapter.

§ 4153. s 10. When it appears from the inventory of the estate of any decedent that his estate consists in whole or in part of mines, or interests in mines, such mines or interests may be sold under the order of the court having jurisdiction of the estate, as herein provided.

Mines may be sold, how.

§ 4154. s 11. The executor or administrator, or any heir at law, or creditor of the estate, or any partner or member of any mining company, in which interests or shares are held or owned by the estate, may file in court a petition, in writing setting forth the general facts of the estate being then in due course of administration, and particularly describing the mine, interest, or shares which it is desired to sell, and particularly the condition and situation of the mines or mining interests, or of the mining company in which such interests or shares are held, and the grounds upon which the sale is asked to be made.

Petition for sale, who may file, and what to contain.

§ 4155. s 12. Upon the presentation of such petition, the court or judge must make an order directing all persons interested to appear before such court, at a time and place specified, not less than four or more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell such mine, mining interests, shares, or stocks, as are set forth in the petition and belonging to the estate. A copy of the order to show cause must be personally served on all persons interested in the estate at least ten days before the time appointed for hearing the petition, or published at least four successive weeks in such newspaper as such court or judge shall specify. If all persons interested in the estate signify in writing their assent to such sale, the notice may be dispensed with.

Order to show cause, and how made and on what notice.

Order of sale,
when and how
made.

§ 4156. s 13. If, upon hearing the petition, it appears to the satisfaction of the court, that it is to the interest of the estate that such mining property or interests of the estate should be sold, or that an immediate sale is necessary, in order to secure the just rights or interests of the mining partners, or tenants in common, such court must make an order authorizing the executor or administrator to sell such mining interests, mines, or shares, as hereinafter provided.

Further pro-
ceedings to
conform to
this Chapter.

§ 4157. s 14. After the order of sale is made, all further proceedings for the sale of such mining property, and for the notice, report, and confirmation thereof, must be in conformity with the provisions of this Chapter.

THE SALE OF REAL ESTATE, INTERESTS THEREIN AND CONFIRMATION
THEREOF.

SECTION.	SECTION.
4158 To sell real estate, when.	4178 Sale may be postponed.
4159 Verified petition for sale, what to contain, and to what it may refer.	4179 Notice of postponement must be given.
4160 Order to persons interested to show cause, etc.	4180 Debts, family allowance, and costs of administration to be paid in accordance with provisions of will.
4161 Copy of order to show cause must be served personally or published, and how, or assent given in writing.	4181 Sale may be made without order of court when so provided in will; no title passes unless sale is confirmed by the court.
4162 Hearing after proof of service; presentation of claims.	4182 Where provision by will is insufficient.
4163 Executor, administrator and witnesses may be examined.	4183 Estate devised or bequeathed subject to pay debts.
4164 Sale of all or portion of real estate, when to be made.	4184 Contribution among devisees and legatees.
4165 Order of sale, when to be made.	4185 Contract of decedent for purchase of lands may be sold, how.
4166 What the order of sale must contain; sale may be public or private.	4186 Conditions of the sale.
4167 Interested parties may apply for order of sale, when.	4187 Purchaser to give bond.
4168 Notice of sale, how given.	4188 Executor or administrator to assign contract.
4169 Public sale, how made, time and place, etc.	4189 Sale of mortgaged lands by executor or administrator.
4170 Private sale, how made, notice, etc.; bids, when and how received.	4190 Mortgagee may purchase mortgaged lands.
4171 Private sales, ninety per cent. of appraised value must be offered	4191 Administrator and executor liable for misconduct in sale.
4172 Purchase on credit, purchase money, how secured.	4192 Administrator or executor liable in double the value of land for fraudulent sale.
4173 Hearing return, and setting aside sale, and when re-sale ordered.	4193 Vacating sales, limitation of actions for,
4174 May file objections, when and who.	4194 To what cases preceding section does not apply; see minors, etc.
4175 When confirmation is, or not to be made.	4195 Account of sales to be returned, etc.
4176 Conveyances to be made, what must be referred to.	4196 Executor or administrator cannot be a purchaser.
4177 Order of confirmation, what to contain.	

§ 4158. s 15. When a sale of property of the estate is necessary to pay the allowance of the family, or the debts outstanding against the decedent, or the debts, expenses, or charges of administration, or legacies, the executor or administrator may also sell any real as well as personal property of the estate for that purpose upon the order of the court; and

To sell real estate, when.

an application for the sale of real property may also embrace the sale of personal property.

Verified petition for sale, what to contain and to what it may refer.

§ 4159. s 16. To obtain such order for the sale of real property, he must present a verified petition to the probate court, or judge thereof, setting forth the amount of personal estate that has come to his hands, how much thereof, if any, remains undisposed of, the debts outstanding against the decedent, as far as can be ascertained or estimated; the amount due upon the family allowance, or that will be due after the same has been in force for one year; the debts, expenses and charges of administration already accrued, and an estimate of what will or may accrue during the administration; a general description of all of the real property of which the decedent died seized, or in which he had any interest, or in which the estate has acquired any interest, and the condition and value thereof, and whether the same be community or separate property; the names of the legatees and devisees, if any, and of the heirs of the deceased, so far as known to the petitioner. If any of the matters here enumerated cannot be ascertained, it must be so stated in the petition; but a failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceeding, if the defect be supplied by the proofs at the hearing, and the general facts showing such necessity be stated in the decree.

Order to persons interested to appear.

§ 4160. s 17. If it appears to the court or judge from such petition, that it is necessary to sell the whole or some portion of the real estate for the purposes and reasons mentioned in the preceding section, or any of them, such petition must be filed and an order thereupon made, directing all persons interested in the estate, to appear before the court, at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell so much of the real estate of the decedent as is necessary.

Copy to be served, assent given, or publication made.

§ 4161. s 18. A copy of the order to show cause must be personally served on all persons interested in the estate, any general guardian of a minor so interested, and any legatee or devisee or heir of the decedent, provided they are residents of the county, at least ten days before the time appointed for hearing the petition, or be published four successive weeks in such newspaper as the court or judge shall direct. If all per-

sons interested in the estate join in the petition for the sale, or signify in writing their assent thereto, the notice may be dispensed with, and the hearing may be had at any time.

§ 4162. s 19. The court, at the time and place appointed in such order, or at such other time to which the hearing may be postponed, upon satisfactory proof of personal service or publication of a copy of the order by affidavit or otherwise, if the consent in writing to such sale of all parties interested is not filed, must proceed to hear the petition, and hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate who may oppose the application. All claims against the decedent not before presented if the period of presentation has not elapsed, may be presented and passed upon at the hearing.

Hearing after
proof of ser-
vice.
Presentation
of claims

§ 4163. s 20. The executor, administrator and witnesses may be examined on oath by either party, and process to compel them to attend and testify may be issued by the court or judge in the same manner and with like effect as in other cases.

Administrator,
etc., may be
examined.

§ 4164. s 21. If it appears necessary to sell a part of the real estate, and that by a sale thereof the residue of the estate, real or personal, or some specific part thereof, would be greatly injured or diminished in value, or subjected to expense, or rendered unprofitable, or that after any such sale the residue would be so small in quantity or value, or would be of such a character with reference to its future disposition among the heirs or devisees, as clearly to render it for the best interest of all concerned that the same should be sold, the court may authorize the sale of the whole estate, or of any part thereof necessary and for the best interest of all concerned.

To sell real
estate or any
part, when

§ 4165. s 22. If the court is satisfied, after a full hearing upon the petition and an examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for any of the causes mentioned in this Chapter, or if such sale be assented to by all the persons interested, an order must be made to sell the whole, or so much and such parts of the real estate described in the petition, as the court shall judge necessary or beneficial.

Order of sale,
when to be
made.

§ 4166. s 23. The order of sale must describe the lands to be sold and the terms of sale, which may be for cash, or

What order of
sale must con-
tain.

on a credit not exceeding one year, payable in gross or in instalments, and in such kind of money, with interest, as the court may direct. The land may be sold in one parcel or in subdivisions, as the executor or administrator shall judge most beneficial to the estate, unless the court otherwise specially directs. If it appears that any part of such real estate has been devised, and not charged in such devise with the payment of debts or legacies, the court must order the remainder to be sold before that so devised. Every such sale must be ordered to be made at public auction, unless, in the opinion of the court, it would benefit the estate to sell the whole or some part of such real estate at private sale. The court may, if the same is asked for in the petition, order or direct such real estate, or any part thereof, to be sold at either public or private sale, as the executor or administrator shall judge to be most beneficial for the estate. If the executor or administrator neglects or refuses to make a sale under the order, and as directed therein, he may be compelled to sell, by order of the court, made on motion, after due notice by any party interested.

May be at public or private sale.

Interested persons may apply for order of sale.

§ 4167. s 24. If the executor or administrator neglects to apply for an order of sale where it is necessary, any person interested may make application therefor, in the same manner as the executor or administrator, and notice thereof must be given to the executor or administrator, before the hearing. The petition of such applicant must contain as many of the matters set forth in section 16 of this Chapter as he can ascertain, and the decree of sale must fix the period of time within which the executor or administrator must make the sale.

Notice of sale.

§ 4168. s 25. When a sale is ordered, and is to be made at public auction, notice of the time and place of sale must be posted in at least three public places in the county in which the land is situated, and published in a newspaper, if there be one printed in the same county, but if none, then in such paper as the court may direct, for three weeks successively next before the sale. The lands and tenements to be sold must be described with common certainty in the notice.

Public sale how made, time and place etc.

§ 4169. s 26. Sales at public auction must be made in the county where the land is situated; but when the land is situated in two or more counties, it may be sold in either.

The sale must be made between the hours of nine o'clock in the morning and the setting of the sun on the same day, and must be made on the day named in the notice of sale unless the same is postponed.

§ 4170. s 27. When a sale of real estate is ordered to be made at private sale, notice of the same must be posted up in at least three public places in the county in which the land is situated, and published in a newspaper if there be one printed in the same county, if none, then in such paper as the court or judge thereof may direct, for two weeks successively next before the day on or after which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty. The notice must state a day on or after which the sale will be made, and a place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice, and the sale must not be made before that day, but must be made within six months thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice, or delivered to the executor or administrator personally, at any time after the first publication of the notice and before the making of the sale. If it be shown that it will be for the best interest of the estate, the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen, but not less than eight days from the first publication of the notice, in which case the notice of sale and the sale may be made to correspond with such order. *Provided*, That when a sale of the whole or any part of the real estate is ordered to be made, and it shall appear from the inventory returned that the whole of said estate does not exceed the sum of one thousand dollars, the publication of the notice in a newspaper as provided in this section may be dispensed with.

Private sale of real estate, how made. Notice.

Bills when and how received.

March 11, 1886

Private sale of real estate without notice by publication.

§ 4171. s 28. No sale of real estate at private sale shall be confirmed by the court, unless the sum offered is at least ninety per cent. of the appraised value thereof, nor unless such real estate has been appraised within one year of the time of such sale. If it has not been so appraised, or if the court is satisfied that the appraisement is too high or too low, appraisers must be appointed, and they must make an appraisement thereof, in the same manner as in case of an

Ninety per cent. of appraised value must be offered.

original appraisement of an estate. This may be done at any time before the sale or the confirmation thereof.

Purchase money on sale on credit, how secured.

§ 4172. s 29. The executor or administrator must, when the sale is made upon a credit, take the notes of the purchaser for the purchase money, with a mortgage on the property to secure their payment; *Provided*, That at least ten per cent. of the purchase money shall be paid at time of sale.

Hearing and setting aside sale, and when re-sale may be ordered.

§ 4173. s 30. The executor or administrator shall within thirty days after making any sale of real estate, make a return of his proceedings to the court, which must be filed in the office of the clerk. A hearing upon the return of the proceedings may be asked for in the return or by petition subsequently, and thereupon the court or judge must fix the day for hearing, of which notice of at least ten days must be given by the clerk, by notices posted in at least three public places in the county, or by publication in a newspaper, or both, as the court or judge shall direct, and must briefly indicate the land sold, the sum for which it was sold, and must refer to the return for further particulars. Upon the hearing the court must examine the return and witnesses in relation to the same, and if the proceedings were unfair, or the sum bid disproportionate to the value, and if it appear that a sum exceeding such bid at least ten per cent., exclusive of the expenses of a new sale, may be obtained, the court may vacate the sale and direct another to be had, of which notice must be given, and the sale in all respects conducted as if no previous sale had taken place. If an offer of ten per cent. more in amount than that named in the return be made to the court in writing, by a responsible person, it is in the discretion of the court to accept such offer and confirm the sale to such person; or to order a new sale.

May file objections, when and who.

§ 4174. s 31. When return of the sale is made and filed, any person interested in the estate may file written objections to the confirmation thereof, and may be heard thereon, when the return is heard by the court or judge, and may produce witnesses in support of his objections.

When order of confirmation is to be made, and when not.

§ 4175. s 32. If it appears to the court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, and that a greater sum, as above specified, cannot be obtained, or if the increased bid mentioned in section 30 of this Chapter be made and accepted by the court, the court must make

an order confirming the sale, and directing conveyances to be executed. The sale from that time is confirmed and valid, and a certified copy of the order confirming it and directing conveyances to be executed, must be recorded in the office of the recorder of the county in which the land sold is situated. If, after the confirmation, the purchaser neglects or refuses to comply with the terms of sale, the court may, on motion of the executor or administrator, and after notice to the purchaser, order a re-sale to be made of the property. If the amount realized on such re-sale does not cover the bid and the expenses of the previous sale, such purchaser is liable for the deficiency to the estate.

§ 4176. s 33. Conveyances must thereupon be executed Conveyances. to the purchaser by the executor or administrator, and they must refer to the orders of the court authorizing and confirming the sale of the property of the estate, and directing conveyances thereof to be executed, and to the record of the order of confirmation in the office of the county recorder, either by the date of such recording, or by the date, volume, and page of the record, and such reference shall have the same effect as if the orders were at large inserted in the conveyance. Conveyances so made convey all the right, title, interest, and estate of the decedent in the premises at the time of his death; if prior to the sale, by operation of law or otherwise, the estate has acquired any right, title, or interest in the premises, other than or in addition to that of the decedent at the time of his death, such right, title, or interest, also passes by such conveyances.

§ 4177. s 34. Before any order is entered confirming Order of confirmation, what to state. the sale, it must be proved to the satisfaction of the court that notice was given of the sale as prescribed, and the order of confirmation must show that such proof was made.

§ 4178. s 35. If at the time appointed for the sale, the Sale may be postponed. executor or administrator deems it for the interest of all persons concerned therein that the same be postponed, he may postpone it from time to time, not exceeding in all three months.

§ 4179. s 36. In case of postponement, notice thereof Notice of postponement. must be given, by a public declaration, at the time and place first appointed for the sale, and if the postponement be for more than one day, further notice must be given, by posting notices in three or more public places in the county where

the land is situated, or publishing the same, or both, as the time and circumstances will admit.

Where payment of debts, etc., provided for by will.

§ 4180. s 37. If the testator makes provision by his will, or designates the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they must be paid according to such provision or designation, out of the estate thus appropriated, so far as the same is sufficient.

Sale, without order, may be quite a security.

§ 4181. s 38. When property is directed by the will to be sold, or authority is given by the will to sell property, the executor may sell any property of the estate without order of the court, and at either public or private sale, and with or without notice, as the testator may have directed, but the executor must make return of such sales, as in other cases; and if directions are given in the will as to the mode of selling, or the particular property to be sold, such directions must be observed. In either case no title passes unless the sale be confirmed by the court.

Where provision by will insufficient.

§ 4182. s 39. If the provision made by the will, or the estate appropriated therefor, is insufficient to pay the debts, expenses of administration, and family expenses, that portion of the estate not devised or disposed of by the will, if any, must be appropriated and disposed of for that purpose, according to the provisions of this Chapter.

Estate subject to debts, etc.

§ 4183. s 40. The estate, real and personal, given by will to legatees or devisees, is liable for the debts, expenses of administration, and family expenses, in proportion to the value or amount of the several devises or legacies; but specific devises or legacies are exempt from such liability, if there is other sufficient estate.

Contribution among legatees.

§ 4184. s 41. When an estate given by will has been sold for the payment of debts or expenses, all the devisees and legatees must contribute according to their respective interests to the devisee or legatee whose devise or legacy has been taken therefor, and the court, when distribution is made, must by decree for that purpose, settle the amount of the several liabilities, and decree the amount each person shall contribute, and reserve the same from their distributive shares, respectively, for the purpose of paying each contribution.

§ 4185. s 42. If a decedent, at the time of his death, was possessed of a contract for the purchase of lands, his interest

in such land and under such contracts may be sold on the application of his executor or administrator, in the same manner as if he had died seized of such lands; and the same proceedings may be had for that purpose as are prescribed in this Chapter for the sale of lands of which he died seized, except as hereinafter provided.

Contracts for purchase of lands may be sold, how.

§ 4186. s 43. The sale must be made subject to all payments that may thereafter become due on such contracts, and if there are any such, the sale must not be confirmed by the court until the purchasers execute a bond to the executor or administrator for the benefit and indemnity of himself and of the persons entitled to the interest of the decedent in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the court or judge shall approve.

Conditions of sale.

§ 4187. s 44. The bond must be conditioned that the purchaser will make all payments for such land that become due after the date of the sale, and will fully indemnify the executor or administrator and the persons so entitled, against all demands, costs, charges and expenses, by reason of any covenant or agreement contained in such contract.

Purchaser to give bond.

§ 4188. s 45. Upon the confirmation of the sale, the executor or administrator must execute to the purchaser an assignment of the contract, which vests in the purchaser, his heirs and assigns, all the right title and interest of the estate, or of the persons entitled to the interest of the decedent in the lands sold at the time of the sale; and the purchaser has the same rights and remedies against the vendor of such land as the decedent would have had if he were living.

Executor to assign contract.

§ 4189. s 46. When any sale is made by an executor or administrator, pursuant to provisions of this Chapter, of lands subject to any mortgage or other lien, which is a valid claim against the estate of the decedent, and has been presented and allowed, the purchase money must be applied, after paying the necessary expenses of the sale, first, to the payment and satisfaction of the mortgage or lien, and the residue, if any, in due course of administration. The application of the purchase money to the satisfaction of the mortgage or lien must be made without delay, and the land is subject to such mortgage or lien until the purchase money has been actually so applied. No claim against any estate, which has been presented and allowed, is affected by the statutes of limitations,

Sales by executors or administrators of lands under mortgage or lien.

pending the proceedings for the settlement of the estate. The purchase money, or so much thereof as may be sufficient to pay such mortgage or lien, with interest, and any lawful costs and charges thereon, may be paid into the court, to be received by the clerk thereof, whereupon the mortgage or lien upon the land must cease, and the purchase money must be paid over by the clerk of the court without delay, in payment of the expenses of the sale, and in satisfaction of the debt to secure which the mortgage or other lien was taken, and the surplus, if any, at once returned to the executor or administrator, unless for good cause shown, after notice to the executor or administrator, the court otherwise directs.

The holder of mortgage, etc., may purchase lands, etc.

§ 4190. s 47. At any sale, under order of the court, of lands upon which there is a mortgage or lien, the holder thereof may become the purchaser and his receipt for the amount due him from the proceeds of the sale is a payment *pro tanto*. If the amount for which he purchased the property is insufficient to defray the expenses and discharge his mortgage or lien, he must pay to the court, or the clerk thereof, an amount sufficient to pay such expenses.

Administrator, etc., liable for misconduct in sale.

§ 4191. s 48. If there is any neglect or misconduct in the proceedings of the executor or administrator in relation to any sale by which any person interested in the estate suffers damage, the party aggrieved may recover the same in an action upon the bond of the executor or administrator, or otherwise.

Fraudulent sales.

§ 4192. s 49. Any executor or administrator who fraudulently sells any real estate of a decedent contrary to or otherwise than under the provisions of this Chapter, is liable in double the value of the land sold, as liquidated damages, to be recovered in an action by the person having an estate of inheritance therein.

Limitation of actions for voiding sale, etc.

§ 4193. s 50. No action for the recovery of any estate sold by an executor or administrator under the provisions of this Chapter, can be maintained by any heir or other person claiming under the decedent, unless it be commenced within three years next after such sale. An action to set aside the sale may be instituted and maintained at any time within three years from the discovery of the fraud or other grounds upon which the action is based.

§ 4194. s 51. The preceding section shall not apply to minors or others under any legal disability to sue at the time

when the right of action first accrues; but all such persons may commence an action at any time within one year after the removal of the disability. To what cases preceding section does not apply.

§ 4195. s 52. When a sale has been made by an executor or administrator of any property of the estate, real or personal, he must return to the court, within thirty days thereafter, an account of sales verified by his affidavit. If he neglects to make such return, he may be punished by attachment, or his letters may be revoked, one day's notice having been first given him to appear and show cause why such attachment should not issue or such revocation should not be made. Account of sale to be returned.

§ 4196. s 53. No executor or administrator must, directly or indirectly, purchase any property of the estate he represents, nor must be interested in any sale. Executor, etc., not to be purchaser.

CHAPTER VIII.

OF THE POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS, AND OF THE MANAGEMENT OF ESTATES.

SECTION.

- 4197 Executor or administrator to take possession of entire estate.
4198 Action for recovery of property.
4199 May maintain actions for waste, conversion, and trespass.
4200 Actions for waste, conversion and trespass against executor or administrator.
4201 Surviving partner to settle up partnership business.
4202 Actions on bond of executor or former administrator.

SECTION.

- 4203 What executors are not necessary parties to actions.
4204 May compound debt, etc., how.
4205 Recovery of property fraudulently conveyed by decedent.
4206 When executor is to sue on fraudulent sale; creditor to contribute to costs.
4207 Disposition of estate recovered from fraudulent sale.

§ 4197. s 1. The executor or administrator must take into his possession all the estate of the decedent, real and personal, and collect all debts due to the decedent or to the estate. For the purpose of bringing suits to quiet title, or for partition of such estate, the possession of the executors Executors to take possession of the entire estate.

or administrators is the possession of the heirs or devisees: such possession by the heirs or devisees is subject, however, to the possession of the executor or administrator for the purpose of administration as provided in this act.

Actions for recovery of property.

§ 4198. s 2. Actions for the recovery of any property real, or personal, or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators, in all cases in which the same might have been maintained by or against their respective testators or intestates.

May maintain actions for waste, conversion and trespass.

§ 4199. s 3. Executors and administrators may maintain actions against any person who has wasted, destroyed, taken, or carried away, or converted to his own use, the goods of their testator or intestate in his lifetime. They may also maintain actions for trespass committed on real estate of the decedent in his lifetime.

Executor, etc., may be sued for waste or trespass of decedent.

§ 4200. s 4. Any person or his personal representative may maintain an action against the executor or administrator of any testator or intestate who in his lifetime has wasted, destroyed, taken, or carried away, or converted to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of such person.

Surviving partner to settle up business, etc.

§ 4201. s 5. When a partnership exists between the decedent, at the time of his death, and any other person, the surviving partner has the right to continue in possession of the partnership, and to settle its business, but the interest of the decedent in the partnership must be included in the inventory and be appraised as other property. The surviving partner must settle the affairs of the partnership without delay and account with the executor or administrator, and pay over such balances as may from time to time be payable to him in right of the decedent. Upon the application of the executor or administrator, the court or judge may, whenever it appears necessary, order the surviving partner to render an account, and in case of neglect or refusal may, after notice, compel it by attachment; and the executor or administrator may maintain against him any action which the decedent could have maintained.

Actions on bond of executor, etc.

§ 4202. s 6. An administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator of the same estate.

§ 4203. s 7. In actions by or against executors, it is not necessary to join those as parties who may have been appointed by the court but who have not qualified.

When executor's not necessary parties to actions.

§ 4204. s 8. Whenever a debtor of the decedent is unable to pay all his debts, the executor or administrator, with the approbation of the court or judge, may compound with him and give a discharge upon receiving a fair and just dividend of his effects. A compromise may also be authorized when it appears to be just, and for the best interests of the estate.

May compound.

§ 4205. s 9. When there is a deficiency of assets in the hands of an executor or administrator, and when the decedent, in his lifetime, has conveyed any real estate, or any rights or interests therein, with intent to defraud his creditors, or to avoid any right, debt, or duty of any person, or has so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator must commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also for the benefit of the creditors sue for and recover all goods, chattels, rights or credits which have been so conveyed by the decedent in his lifetime, whatever may have been the manner of such fraudulent conveyance.

Recovery of property fraudulently disposed of by testator.

§ 4206. s 10. No executor or administrator is bound to sue for such estate as mentioned in the preceding section for the benefit of the creditors unless on application of creditors, who must pay such part of the costs and expenses of the suit, or give such security to the executor or administrator therefor as the court or judge shall direct.

When executor to sue; creditors to contribute to costs.

§ 4207. s 11. All real estate so recovered must be sold for the payment of debts in the same manner as if the decedent had died seized thereof, upon obtaining an order therefor from the court; and the proceeds of all goods, chattels, rights and credits so recovered must be appropriated in payment of the debts of the decedent in the same manner as other property in the hands of the executor or administrator.

Disposition of estate recovered.

CHAPTER IX.

OF THE CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

SECTION.	SECTION.
4208 Executor, who, by contract, has bound himself to convey tract of decedent for sale of real estate.	4209 If right of party to enforce contract doubtful, petition to be dismissed.
4209 Petition for executor or administrator to make conveyance, and notice of the hearing.	4214 Effect of the conveyance.
4210 Interested parties may contest.	4215 Hearing thereon does not suspend power of court.
4211 Conveyance, when ordered to be made.	4217 Where party to whom conveyance is made is dead.
4212 Conveyance, sometimes, may be made before hearing.	4218 Heirs may contest possession to be surrendered.

Executor to complete contracts for sale of real estate

§ 4208. s 1. When a person who is bound by contract in writing to convey any real estate, dies before making the conveyance, and in all cases when such decedent, if living, might be compelled to make such conveyance, the court may make a decree authorizing and directing his executor or administrator to convey such real estate to the person entitled thereto.

Interested parties may contest.

§ 4209. s 2. On the presentation of a verified petition by any person claiming to be entitled to such conveyance from an executor or administrator, setting forth the facts upon which the claim is predicated, the court or judge, must appoint a time and place for hearing the petition, and must order notice thereof to be published at least four successive weeks before such hearing, in such newspaper in this Territory as he may designate, or by posting notices in at least three public places in the county.

Interested parties may contest.

§ 4210. s 3. At the time and place appointed for the hearing, or at such other time to which the same may be postponed, upon satisfactory proof by affidavit or otherwise of the due publication of the notice or posting thereof, the court must proceed to a hearing, and all persons interested in the estate may appear and contest such petition, by filing their objections in writing, and the court may examine, on oath, the

petitioner and all who may be produced before him for that purpose.

§ 4211. s 4. If, after a full hearing upon the petition and objections, and examination of the facts and circumstances of the claim, the court is satisfied that the petitioner is entitled to a conveyance of the real estate described in the petition, a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner must be made, entered on the minutes of the court and recorded.

§ 4212. s 5. The executor or administrator must execute the conveyance according to the directions of the decree, a certified copy of which must be recorded with the deed in the office of the recorder of the county where the lands lie, and is *prima facie* evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

§ 4213. s 6. If upon a hearing, as hereinbefore provided, the right of the petitioner to have a specific performance of the contract, is found to be doubtful, the court must dismiss the petition without prejudice to the right of the petitioner, who may, at any time within six months thereafter, proceed by action to enforce a specific performance thereof.

§ 4214. s 7. Every conveyance made in pursuance of a decree as provided in this Chapter, shall pass the title to the estate contracted for as fully as if the contracting party himself were still living and executed the conveyance.

§ 4215. s 8. A copy of the decree for a conveyance, as provided in this Chapter, duly certified and recorded in the office of the recorder of the county where the lands lie, gives the person entitled to the conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

§ 4216. s 9. The recording of any decree, as provided in the preceding section, shall not prevent the court making the decree from enforcing the same by other process.

§ 4217. s 10. If the person entitled to the conveyance dies before the commencement of proceedings therefor under this Chapter, or before the completion of the conveyance, any person entitled to succeed to his rights in the contract, or the executor or administrator of such decedent, may for the

benefit of the person so entitled, commence such proceedings or prosecute any already commenced, and the conveyance must be so made as to vest the estate in the persons entitled to it, or in the executor or administrator, for their benefit.

Decree may direct possession to be surrendered

§ 4218. s 11. The decree provided for in this Chapter may direct the possession of the property therein described to be surrendered to the person entitled thereto, upon his producing the deed and certified copy of the decree when, by the terms of the contract, possession is to be surrendered.

CHAPTER X.

ACCOUNTS, AND THE PAYMENT OF DEBTS.

SECTION.

SECTION.

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| 4219 When executor or administrator personally liable. | 4223 Compensation of the executor or administrator, by will and what expenses allowed. |
| 4220 Every executor and administrator charged with all the estate. | 4224 Not to purchase claims against estate. |
| 4221 Not to profit or lose by estate. | 4225 Executors and administrators commissioners of, not by will. |
| 4222 Not liable for uncollected debts without fault. | |

When executor or administrator personally liable.

§ 4219. s 1. No executor or administrator is chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, expressing the consideration therefor, is in writing and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

Executor to be charged with all estate, etc.

§ 4220. s 2. Every executor and administrator is chargeable in his account with the whole of the estate of the decedent which may come into his possession at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interests, profits and income of the estate.

§ 4221. s 3. He shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his

fault of any part of the estate. He must account for the excess when he sells any part of the estate for more than the appraisement, and if any is sold for less than the appraisement, he is not responsible for the loss if the sale has been justly made.

Not to profit or lose by estate.

§ 4222. s 4. No executor or administrator is accountable for any debts due the decedent, if it appears that they remain uncollected without his fault.

Uncollected debts without fault.

§ 4223. s 5. He shall be allowed all necessary expenses in the care, management and settlement of the estate, including reasonable fees paid to attorneys for conducting the necessary proceedings or suits in courts, and for his services such fees as provided in this Chapter; but when the decedent, by his will, makes some other provision for the compensation of his executor, that shall be a full compensation for his services, unless, by a written instrument, filed in the court, he renounces all claim for compensation provided for by the will.

Compensation of the executor and administrator.

§ 4224. s 6. No administrator or executor shall purchase any claim against the estate he represents; and if he pays any claim for less than its nominal value, he is only entitled to charge in his account the amount he actually paid.

Not to purchase claims against estate.

§ 4225. s 7. When no compensation is provided by the will, or the executor renounces all claim thereto, he must be allowed commissions upon the amount of estate accounted for by him, as follows: For the first thousand dollars, at the rate of seven per cent.; for all above that sum, and not exceeding ten thousand dollars, at the rate of five per cent.; for all above ten thousand dollars, and not exceeding twenty thousand dollars, at the rate of four per cent.; for all above twenty thousand dollars, and not exceeding fifty thousand dollars, at the rate of three per cent.; for all above fifty thousand dollars, and not exceeding one hundred thousand dollars, at the rate of two per cent.; and for all above one hundred thousand dollars, at the rate of one per cent. The same commissions shall be allowed to administrators. In all cases such further allowance may be made as the court may deem just and reasonable for any extraordinary service, but the total amount of such extra allowance must not exceed one-half the amount of commissions allowed by this section. Where the property of the estate is distributed in kind and involves no labor beyond the custody and distribution of the

Executors' and administrators' commissions.

same, the commission shall be computed on all the estate above the value of twenty thousand dollars, at one-half of the rates fixed in this section. All contracts between an executor or administrator and an heir, devisee or legatee, for a higher compensation than that allowed by this section, shall be void; *Provided*, This act shall not apply to estates now in course of administration, except where and to the extent that such estates consist of bonds and other securities, to be distributed without extra expense in an administration.

ACCOUNTING AND SETTLEMENT BY EXECUTORS AND ADMINISTRATORS.

SECTION.	SECTION.
4226 Must exhibit account of receipts and disbursements, claims allowed, show condition of estate, within six months	4236 Vouchers for less than \$20., when accepted.
4227 Citation to appear and render account.	4237 Account rendered, day of settlement fixed, and notice thereof.
4228 Petition for citation to render accounts.	4238 Final settlement, partition and distribution at same time.
4229 Citation to appear on application.	4239 Interested parties may file exceptions to account.
4230 Objections to account, who may make.	4240 Heirs may contest what matters; the hearing; appointment of referees.
4231 Attachment for not obeying citation.	4241 Settlement of accounts when, and not conclusive.
4232 To render account on expiration of term.	4242 Proof of notice of settlement of accounts.
4233 Executor, etc., to account after his authority revoked.	4243 On application for sale of real estate, court may order sale of personal property.
4234 When power of executor or administrator may be revoked.	4244 Money invested by order of court.
4235 To produce and file vouchers which remain in court.	

Exhibit of receipts and disbursements, and claims allowed.

§ 4226. s 8. Six months after his appointment, and at any time when required by the court, either upon his own motion or upon the application of any person interested in the estate, the executor or administrator must render, for the information of the court, an exhibit under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs.

§ 4227. s 9. If the executor or administrator fails to render an exhibit for six months after his appointment, the court or judge must cause a citation to be issued requiring him to appear and render it.

Citation to appear and render account.

§ 4228. s 10. Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the court, or judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts showing that it is necessary and proper that such an exhibit should be made.

Petition for citation to render final or other account.

§ 4229. s 11. If the court or judge is satisfied, either from the oath of the applicant or from any other testimony offered, that the facts alleged are true, and considers the showing of the applicant sufficient, he must direct a citation to be issued to the executor or administrator, requiring him to appear, at some day to be named in the citation, and render an exhibit as prayed for.

Citation to account on application.

§ 4230. s 12. When an exhibit is rendered by an executor or administrator, any person interested may appear and by objections in writing contest any account or statement therein contained. The court may examine the executor or administrator, and if he has been guilty of neglect or has wasted or embezzled or mismanaged the estate, his letters must be revoked.

Objections to account, who may file.

§ 4231. s 13. If any executor or administrator neglects or refuses to appear and render an exhibit after having been duly cited, an attachment may be issued against him, and such exhibit enforced, or his letters may be revoked in the discretion of the court.

Attachment for not obeying citation.

§ 4232. s 14. Within thirty days after the expiration of the time mentioned in the notice to creditors within which claims must be exhibited, every executor or administrator must render a full account and report of his administration. If he fails to present his account the court or judge must compel the rendering of the account by attachments, and any person interested in the estate may apply for and obtain an attachment; but no attachment must issue unless a citation has been first issued, served and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue. Every account must exhibit all debts which have been presented and allowed during the period embraced in the account.

To render accounts at expiration of term.

Executor to
account after
his authority
revoked.

§ 4233. s 15. When the authority of an executor or administrator ceases, or is revoked for any reason, he may be cited to account before the court, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

Revoking au-
thority of exe-
cutor, when.

§ 4234. s 16. If the executor or administrator resides out of the county or absconds or conceals himself so that the citation cannot be personally served, and neglects to render an account within thirty days after the time prescribed in this Chapter, or if he neglects to render an account within thirty days after being committed where the attachment has been executed, his letters must be revoked.

To produce
and file vouch-
ers, which re-
main in court.

§ 4235. s 17. In rendering his account the executor or administrator must produce and file vouchers for all charges, debts, claims and expenses which he has paid, which must remain in the court; and he may be examined on oath touching such payments, and also touching any property and effects of the decedent, and the disposition thereof. When any voucher is required for other purposes, it may be withdrawn on leaving a certified copy on file. If a voucher is lost, or for other good reason cannot be produced on the settlement, the payment may be proved by the oath of any competent witness.

Vouchers
for items less
than twenty
dollars, when
accepted.

§ 4236. s 18. On the settlement of his account he may be allowed any item of expenditure not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own uncontradicted oath positive to the fact of payment, specifying when, where and to whom it was made, but such allowances in the whole must not exceed five hundred dollars against any one estate, and if upon such settlement of accounts, it appear that the debts against the deceased have been paid without the affidavit and allowance prescribed by statute, or sections 5, 6 and 7, Chapter VI., of this act, and it shall be proven by competent evidence to the satisfaction of the court that such debts were justly due, were paid in good faith, that the amount paid was the true amount of such indebtedness over and above all payments, or set off, and that the estate is solvent, it shall be the duty of the said court to allow the said sum so paid in the settlement of said accounts.

§ 4237. s 19. When any account is rendered for settlement, the court, or judge must appoint a day for the settle-

ment thereof: the clerk must thereupon give notice thereof by causing notices to be posted in at least three public places in the county, setting forth the name of the estate, the executor or administrator, and the day appointed for the settlement of the account. The court, or judge, may order such further notice to be given as may be proper.

Day of settlement to be appointed, and notice thereof.

§ 4238. s 20. If the account mentioned in the preceding section be for a final settlement, and a petition for the final distribution of the estate be filed with said accounts, the notice of the settlement must state those facts, which notice must be given for the length of time and in the manner prescribed in section 25 of Chapter VII. of this act. On the settlement of said account, distribution and partition of the estate to all entitled thereto, may be immediately had without further notice or proceedings.

Final settlement, partition and distribution made at same time.

§ 4239. s 21. On the day appointed or any subsequent day to which the hearing may be postponed by the court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

Interested party may file exceptions to account.

§ 4240. s 22. All matters, including allowed claims not passed upon on the settlement of any former accounts, or on rendering an exhibit, or on making a decree of sale, may be contested by the heirs, for cause shown. The hearing and allegations of the respective parties may be postponed from time to time, when necessary, and the court may appoint one or more referees to examine the accounts and make report thereon, subject to confirmation; and may allow a reasonable compensation to the referees, to be paid out of the estate of the decedent.

All matters may be contested by the heirs; hearing.

§ 4241. s 23. The settlement of the account and the allowance thereof by the court, or upon appeal, is conclusive against all persons in any way interested in the estate, saving however, to all persons laboring under any legal disability, their right to move for cause to re-open and examine the account, or to proceed by action against the executor or administrator, either individually or upon his bond, at any time before final distribution; and in any action brought by any such person, the allowance and settlement of the account is *prima facie* evidence of its correctness.

Settlement of accounts to be conclusive, when and when not.

§ 4242. s 24. The account must not be allowed by the court until it is first proved that notice has been given as required by this Chapter, and the decree must show that such

Proof of notice of settlement accounts.

proof was made to the satisfaction of the court, and is conclusive evidence of the fact.

Sale of personal property.

§ 4243. s 25. Whenever it appears to the court on any hearing of an application for the sale of real property, that it would be for the interest of the estate that personal property of the estate, or some part of such property, should be first sold, the court may decree the sale of such personal property, or any part of it, and the sale thereof shall be conducted in the same manner as if the application had been made for the sale of such personal property in the first instance.

Moneys invested by order of court.

§ 4244. s 26. Pending the settlement of any estate, on the petition of any party interested therein and upon good cause shown therefor, the court may order any moneys in the hands of the executors or administrators to be invested for the benefit of the estate in securities of the United States or other good securities to be approved by the court or judge. Such order can only be made after publication of notice of the petition in some newspaper, to be designated by the court or judge.

THE PAYMENT OF DEBTS OF THE ESTATE.

SECTION.

- 4245 Order in which debts may be paid.
- 4246 Where property insufficient to pay liens.
- 4247 Estate insufficient, a dividend to be paid.
- 4248 Funeral expenses, and of last sickness.
- 4249 Order for payment of debts and discharge of executor.
- 4250 Disputed and contingent claims, provision for.

SECTION.

- 4251 After decree for payment of debts, executor, etc., liable to creditors.
- 4252 Claim not included in order for payment of debts, how disposed of.
- 4253 Order for payment of legacies, and extension of time.
- 4254 Final account, when to be made.
- 4255 Neglect to render final accounts, how treated.

Order in which debts may be paid.

§ 4245. s 27. The debts of the estate, subject to the provisions of this act pertaining to liens, must be paid in the following order:

1. Funeral expenses.

2. The expenses of the last sickness.

3. All debts which were liens on the property of the decedent at the time of his death.

4. All other demands against the estate.

§ 4246. s 28. The preference given in the preceding section to liens, only extends to the proceeds of the property affected by the liens and to the extent thereof. If the proceeds of such property is insufficient to pay the liens, the part remaining unsatisfied must be classed with other demands against the estate.

Where property is insufficient to pay liens.

§ 4247. s 29. If the estate is insufficient to pay all the debts of any one class, each creditor must be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment until all those of the preceding class are fully paid.

Estate insufficient, a dividend to be paid.

§ 4248. s 30. The executor or administrator, as soon as he has sufficient funds in his hands, must pay the funeral expenses and expenses of the last sickness, and the allowance made to the family of the decedent. He may retain in his hands the necessary expenses of administration, but he is not obliged to pay any other debt or any legacy until, as prescribed in this Chapter, the payment has been ordered by the court.

Funeral expenses, and of last sickness.

§ 4249. s 31. Upon the settlement of the accounts of the executor or administrator, as required in this Chapter, the court must make an order for the payment of the debts, as circumstances of the estate require. If there are not sufficient funds in the hands of the executor or administrator, the court must specify in the decree the sum to be paid to each creditor. If the whole property of the estate be exhausted by such payment or distribution, such account must be considered as a final account, and the executor or administrator is entitled to his discharge on producing and filing the necessary vouchers and proofs showing that such payments have been made and that he has fully complied with the decree of the court.

Order for payment of debts and discharge of executor, etc.

§ 4250. s 32. If there is any claim not due, or any contingent or disputed claim against the estate, the amount thereof or such part of the same as the holder would be entitled to if the claim were due, established or absolute, must be paid into the court and there remain to be paid over to the party when he becomes entitled thereto, or if he fails to es-

Provision for disputed and contingent claims.

establish his claim, to be paid over or distributed as the circumstances of the case require. If any creditor whose claim has been allowed but is not yet due, appears and assents to a deduction therefrom of the legal interest for the time the claim has yet to run, he is entitled to be paid accordingly. The payments provided for in this section are not to be made when the estate is insolvent, unless a *pro rata* distribution is ordered.

After decree for payment of debts, executor personally liable to creditors.

§ 4251. s 33. When a decree is made by the court for the payment of creditors, the executor or administrator is personally liable to each creditor for his allowed claim, or the dividend thereon. An execution may be issued on such decree, as upon a judgment in the court, in favor of each creditor, and the same proceedings may be had under such execution as under execution in other cases. The executor or administrator is liable therefor on his bond to each creditor.

Claims not included in order for payment of debts, how disposed of

§ 4252. s 34. When the accounts of the administrator or executor have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order for payment has any right to call upon the creditors who have been paid, or upon the heirs, devisees or legatees, to contribute to the payment of his claim; but if the executor or administrator has failed to give the notice to the creditors, as prescribed in sections 1 and 2, Chapter VI. of this act, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed. This section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent, and did not become absolute ten months before such day.

Order for payment of legacies and extension of time.

§ 4253. s 35. If the whole of the debts have been paid by the first distribution, the court must direct the payment of legacies and the distribution of the estate among the heirs, legatees, or other persons entitled as provided in the next Chapter; but if there be debts remaining unpaid, or if, for other reasons, the estate be not in a proper condition to be closed, the court must give such extension of time as may be reasonable, for a final settlement of the estate.

§ 4254. s 36. At the time designated in the last section, or sooner, if within that time all the property of the estate has been sold, or there are sufficient funds in his hands for the payment of all the debts due by the estate, and the estate be in a proper condition to be closed, the executor or administrator must render a final account, and pray a settlement of his administration. Final account, when to be made.

§ 4255. s 37. If he neglects to render his account, the same proceedings may be had as prescribed in this Chapter in regard to the first account to be rendered by him, and all the provisions of this Chapter relative to the last mentioned account shall apply to his account presented for final settlement, except the notice of settlement, which shall be as prescribed in section 20 of this Chapter. Neglect to render final account how treated.

CHAPTER XI.

OF THE PARTITION, DISTRIBUTION AND FINAL SETTLEMENT OF ESTATES.

SECTION.

- 4256 Payment of legacies upon giving bonds.
 4257 Notice of application for legacies.
 4258 Executors, etc., or interested parties may resist application.

SECTION.

- 4259 Distributee must give bond; may order whole or part of share to be delivered; when partition necessary, how made; costs.
 4260 Order for payment of bond and suit thereof.

§ 4256. s 1. At any time after the lapse of four months from the issuing of letters testamentary, or of administration, any heir, devisee, or legatee may present his petition to the court for the legacy or share of the estate to which he is entitled to be given to him upon his giving bonds, with security, for the payment of his proportion of the debts of the estate. Payment of legacies upon giving bonds.

§ 4257. s 2. Notice of the application must be given to the executor or administrator, personally, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator. Notice of application for legacies.

Executor or
other person
may resist ap-
plication.

§ 4258. s 3. The executor or administrator, or any person interested in the estate, may appear at the time named and resist the application, or any other heir, devisee or legatee may make a similar application for himself.

Decree prayed
for to require
bond, which
must be
given.

§ 4259. s 4. If at the hearing, it appears that the estate is but little indebted, and that the share of the party applying may be allowed to him without loss to the creditors of the estate, the court must make an order in conformity with the prayer of the applicant, requiring:

1. Each heir, legatee or devisee obtaining such order, before receiving his share or any portion thereof, to execute and deliver to the executor or administrator a bond, in such sum as shall be designated by the court or judge, with sureties to be approved by the judge, payable to the executor or administrator, and conditioned for the payment, whenever required, of his proportion of the debts due from the estate, not exceeding the value or amount of the legacy or portion of the estate to which he is entitled.

May order
whole or part
of share to be
deposited.
When par-
tition neces-
sary, how
made. Costs.

2. The executor or administrator to deliver to the heir, legatee or devisee, the whole portion of the estate to which he may be entitled, or only a part thereof, designating it. If, in the execution of the order, a partition is necessary between two or more of the parties interested, it must be made in the manner hereinafter prescribed. The costs of these proceedings shall be paid by the applicant, or if there be more than one, shall be apportioned equally among them.

Order for pay-
ment of bond,
and suit
thereon.

§ 4260. s 5. When any bond has been executed and delivered under the provisions of the preceding section, and it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, the executor or administrator must petition the court for an order requiring the payment, and have a citation issued and served on the party bound, requiring him to appear and show cause why the order should not be made. At the hearing, the court, if satisfied of the necessity of such payment, must make an order accordingly, designating the amount and giving a time within which it must be paid. If the money is not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

DISTRIBUTION ON FINAL SETTLEMENT.

SECTION.

- 4261 Distribution of estate, how and to whom made.
 4262 What decree must contain, conclusive of what.
 4263 Distribution when decedent was non-resident of Territory.

SECTION.

- 4264 Decree of distribution, petition for, notice of application
 4265 No distribution till taxes on personal property paid.

§ 4261. s 6. Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, legatee, or devisee, the court must proceed to distribute the residue of the estate in the hands of the executor or administrator, if any, among the persons who by law are entitled thereto: and if the decedent has left a surviving child, and the issue of other children, and any of them, before the close of the administration, have died while under age and not having been married, no administration on such deceased child's estate is necessary, but all the estate which such deceased child was entitled to by inheritance must, without administration, be distributed to the other heirs-at-law. A statement of any receipts and disbursements of the executor or administrator, since the rendition of his final accounts, must be reported and filed at the time of making such distribution, and a settlement thereof, together with an estimate of the expenses of closing the estate, must be made by the court, and included in the order or decree, or the court or judge may order notice of the settlement of such supplementary accounts, and refer the same as in other cases of the settlement of accounts.

§ 4262. s 7. In the order of decree, the court must name the persons and the proportions or parts to which each shall be entitled, and such persons may demand, and sue for in any court of competent jurisdiction and recover their respective shares from the executor or administrator, or any person having the same in possession. Such order or decree is conclusive as to the rights of heirs, legatees or devisees, subject only to be reversed, set aside, or modified on appeal.

Distribution of estate, how made and to whom.

What the decree must contain, and is final.

Distribution
when deced-
ent was not a
resident of
this Territory.

§ 4263. s 8. Upon application for distribution, after final settlement of the accounts of administration, if the decedent was a non-resident of this Territory, leaving a will which has been duly proved or allowed in the State of his residence, an authenticated copy thereof has been admitted to probate in this Territory, and it is necessary, in order that the estate or any part thereof, may be distributed according to the will, that the estate in this Territory should be delivered to the executor or administrator in the State or place of his residence, the court may order such delivery to be made, and, if necessary, order a sale of the real estate, and a like delivery of the proceeds. The delivery, in accordance with the order of the court, is a full discharge of the executor or administrator with the will annexed, in this Territory, in relation to all property embraced in such order, which, unless reversed on appeal, binds and concludes all parties in interest. Sales of real estate, ordered by virtue of this section, must be made in the same manner as other sales of real estate of decedents by order of the court.

Decree to be
made only af-
ter notice.

§ 4264. s 9. The order or decree may be made on the petition of the executor or administrator, or of any person interested in the estate. Notice of the application must be given by posting or publication as the court may direct, and for such time as may be ordered. If partition be applied for, as provided in this Chapter, the decree of distribution shall not divest the court of jurisdiction to order partition, unless the estate is finally closed.

No distribu-
tion till all
taxes on per-
sonal property
are paid.

§ 4265. s 10. Before any decree of distribution of an estate is made, the court must be satisfied, by the oath of the executor or administrator, or otherwise, that all Territorial, county, and municipal taxes, legally levied upon personal property of the estate, have been fully paid.

DISTRIBUTION AND PARTITION.

SECTION.	SECTION.
4266 Estate distributed in common, how partitioned.	4272 Payment for equality of partition, by whom and how.
4267 Notice of petition for partition must be given.	4273 Estate may be sold, when.
4268 Estate in different counties, how divided.	4274 To give notice of proceedings in partition.
4269 Partition how made when share sold by heir, etc.	4275 To make report, and partition; record of deed.
4270 Shares to be set out by metes and bounds.	4276 When commissioners not necessary to make partition.
4271 Whole estate may be assigned to one person in certain cases.	4277 Advancement made to heirs, etc.

§ 4266. § 11. When the estate, real or personal assigned by the decree of distribution to two or more heirs, devisees or legatees, is in common and undivided, and the respective shares are not separated and distinguished, partition or distribution may be made by three disinterested persons to be appointed commissioners for that purpose by the court, who must be duly sworn to the faithful discharge of their duties. A certified copy of the order of their appointment, and of the order or decree assigning and distributing the estate, must be issued to them as their warrant, and their oath must be indorsed thereon. Upon consent of the parties, or when the court deems it proper and just, it is sufficient to appoint one commissioner only, who has the same authority and is governed by the same rules as if three were appointed.

§ 4267. § 12. Such partition may be ordered and had in the probate court on the petition of any person interested. But before commissioners are appointed, or partition ordered by the court as directed in this Chapter, notice thereof must be given to all persons interested who reside in this Territory, or to their guardians and to the agents, attorneys, or guardians, if any in this Territory, of such as reside out of this Territory, either personally or by public notice as the court may direct. The petition may be filed, attorneys, guardians, and agents appointed, and notice given at any time before the order or decree of distribution, but the commissioners must not be appointed until the order or decree is made distributing the estate.

Estate in common
commissioners

Partition and
notice thereof,
and the time
of filing pe-
tition.

Estate in
different coun-
ties, how di-
vided.

§ 4268. s 13. If the real estate is in different counties, the court may, if deemed proper, appoint commissioners who shall make division of such real estate whenever situated within this Territory.

Partition may
be made al-
though some
of the heirs,
etc.

§ 4269. s 14. Partition or distribution of the real estate may be made as provided in this Chapter, although some of the original heirs, legatees, or devisees, may have conveyed their shares to other persons, and such shares must be assigned to the person holding the same, in the same manner as they otherwise would have been to such heirs, legatees, or devisees.

Shares to be
set out by
metes and
bounds.

§ 4270. s 15. When both distribution and partition are made, the several shares in the real and personal estate must be set out to each individual in proportion to his right, by metes or bounds, or description, so that the same can be easily distinguished, unless two or more of the parties interested consent to have their shares set out so as to be held by them in common and undivided.

Whole estate
may be as-
signed to one
in certain
cases.

§ 4271. s 16. When the real estate cannot be divided without prejudice or inconvenience to the owners, the court may assign the whole to one or more of the parties entitled to share therein who will accept it, always preferring the males to the females, and among children preferring the elder to the younger. The parties accepting the whole must pay to the other parties interested their just proportion of the true value thereof, or secure the same to their satisfaction, or in case of the minority of such party, then to the satisfaction of his guardian; and the true value of the estate must be ascertained and reported by the commissioners. When the commissioners appointed to make partition are of the opinion that the real estate cannot be divided without prejudice or inconvenience to the owners, they must so report to the court, and recommend that the whole be assigned as herein provided, and must find and report the true value of such real estate. On filing the report of the commissioners, and on making or securing the payment as before provided, the court, if it appears just and proper, must confirm the report, and thereupon the assignment is complete, and the title to the whole of such real estate vests in the person to whom the same is so assigned.

§ 4272. s 17. When any tract of land or tenement is of greater value than any one's share in the same estate to be

divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition to any of the parties who will accept it, giving preference as prescribed in the preceding section. The party accepting must pay or secure to the others, such sums as the commissioners shall award, to make the partition equal, and the commissioners must make their award accordingly; but such partition must not be established by the court until the sums awarded are paid to the parties entitled to the same, or secured to their satisfaction.

Payment for equality of partition, by whom and how.

§ 4273. s 18. When it appears to the court from the commissioners' report that it cannot otherwise be fairly divided and should be sold, the court may order the sale of the whole or any part of the estate, real or personal, by the executor or administrator, or by a commissioner appointed for that purpose, and the proceeds distributed. The sale must be conducted, reported and confirmed, in the same manner and under the same requirements as provided in Chapter VII. of this act relating to "The sale of real estate, interests therein, and confirmation thereof."

Estate may be sold.

§ 4274. s 19. Before any partition is made or any estate divided, as provided in this Chapter, notice must be given to all persons interested in the partition, their guardians, agents, or attorneys, by the commissioners, of the time and place when and where they shall proceed to make partition. The commissioners may take testimony, order surveys, and take such other steps as may be necessary to enable them to form a judgment upon the matter before them.

To give notice to all parties before partition, etc.

§ 4275. s 20. The commissioners must report their proceedings, and the partition agreed upon by them to the court, in writing, and the court may, for sufficient reasons, set aside the report and commit the same to the same commissioners, or appoint others, and when such report is finally confirmed, a certified copy of the judgment or decree of partition made thereon, attested by the clerk under the seal of the court, must be recorded in the office of the recorder of the county where the lands lie.

To make report and partition to be recorded.

§ 4276. s 21. When the court makes a judgment or decree assigning the residue of any estate to one or more persons entitled to the same, it is not necessary to appoint commissioners to make partition or distribution thereof unless the

When commissioners to make partition are not necessary.

parties to whom the assignment is decreed, or some of them, request that such partition be made.

Advance
ments made
to heirs.

§ 1277. s 22. All questions as to advancements made, or alleged to have been made, by the decedent to his heirs may be heard and determined by the court and must be specified in the decree assigning and distributing the estate: and the final judgment or decree of the court, or in case of appeal of the district court, is binding on all parties interested in the estate.

AGENTS FOR ABSENT OR INTERESTED PARTIES.—DISCHARGE OF EXECUTOR OR ADMINISTRATOR.

SECTION.

- 4278 Absentees, court to appoint agents for.
- 4279 Bond of agent, and his compensation.
- 4280 Estate unclaimed, disposition of.
- 4281 Agent to order account, when property of absentee to be sold, disposition of proceeds.
- 4282 Liability of agent on his bond.

SECTION.

- 4283 Proceeds of sale, how paid to claimant.
- 4284 Final settlement upon full administration and discharge of executor or administrator.
- 4285 Discovery of property after final settlement, and the re-issue of letters, etc.

Court may ap-
point agent to
take posses-
sion for ab-
sentees.

§ 4278. s 23. When any estate is assigned or distributed by a judgment or decree of the court, as provided in this Chapter, to any person residing out of and having no agent in this Territory, and it is necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person in the distribution.

Agent to give
bond, and his
compensation.

§ 4279. s 24. The agent must execute a bond to the Territory of Utah, to be approved by the court or judge, conditioned that he shall faithfully manage and account for the estate. The court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

§ 4280. s 25. When personal property remains in the hands of the agent unclaimed for a year, and it appears to the court that it is for the benefit of those interested, it shall be sold under the order of the court, and the proceeds, after deducting the expenses of the sale allowed by the court, must be paid into the county treasury of the county wherein administration is had. When the payment is made, the agent must take from the treasurer duplicate receipts, one of which he must file in the office of the county clerk of such county.

Unclaimed estate, how disposed of.

§ 4281. s 26. The agent must render to the court appointing him, annually, an account, showing:

When real and personal property of absentee to be sold.

1. The value and character of the property received by him, which portion thereof is still on hand, what sold and for what.

2. The income derived therefrom.

3. The taxes and assessments imposed thereon, for what, and whether paid or unpaid.

4. Expenses incurred in the care, protection and management thereof, and whether paid or unpaid.

When filed, the court may examine witnesses and take proofs in regard to the account; and if satisfied from such accounts and proofs that it will be for the benefit and advantage of the persons interested therein, the court may, by order, direct a sale to be made of the whole or such parts of the real or personal property as shall appear to be proper, and the purchase money to be deposited in the county treasury.

§ 4282. s 27. The agent is liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of the sale, as required in the preceding sections, and may be sued thereon by any person interested.

Liability of agent on his bond.

§ 4283. s 28. When any person appears and claims the money paid into the treasury, the court making the distribution must inquire into such claim, and being first satisfied of his right thereto must grant him a certificate to that effect, under its seal; and upon the presentation of the certificate to him, the county clerk must draw his warrant on the county treasurer for the amount.

Certificate to claimant.

§ 4284. s 29. When the estate has been fully administered, and it is shown by the executor, or administrator, by

Final settle-
ment, decree,
dis charge.

the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, under the order of the court, all the property of the estate to the parties entitled, and performed all the acts lawfully required of him, the court must make a judgment or decree discharging him from all liability to be incurred thereafter.

Discovery of
property.

§ 4285. s 30. The final settlement of an estate, as in this Chapter provided, shall not prevent a subsequent issue of letters testamentary, or of administration, or of administration with the will annexed, if other property of the estate be discovered, or if it becomes necessary or proper for any cause that letters should be again issued.

CHAPTER XII.

OF ORDERS, DECREES, PROCESS, MINUTES, RECORDS, TRIALS AND APPEALS.

SECTION.	SECTION.
4286 Orders and decrees to be entered of record.	4295 Rules of practice generally.
4287 Publication daily unless otherwise ordered by court.	4296 New trial, civil Code to apply, how far.
4288 Decrees and orders are required by the act to be recorded in county recorder's office, and impart notice from date of filing.	4297 Issues, how tried and disposed of
4289 Citation, what to contain, how directed, and delivered.	4298 New trial, either party may move for.
4290 Citation, how issued.	4299 Minors, absent heirs, distributees, etc., in what proceedings court will appoint an attorney for.
4291 Citation, how served.	4300 Homestead, decree for, and effect thereof.
4292 Personal notice by citation, when.	4301 Costs, by whom paid in certain cases.
4293 Citation to be served five days before return day, except when different time prescribed in this act.	4302 Executor, administrator or guardian removed for contempt.
4294 One description of real estate published, sufficient, when.	4303 Service on infant, etc., may be made on guardian.
	4304 Termination of life estate, etc., proceedings.

Orders and
de crees to be
entered in
minutes.

§ 4286. s 1. Orders or decrees made by the court, or judge, in probate proceedings, need not recite the existence of facts or the performance of acts upon which the juris-

diction of the court or judge may depend, but it shall only be necessary that they contain the matters ordered or adjudged, except as otherwise provided in this act. All orders and decrees of the court or judge must be entered at length in the record books of the court provided and kept for that purpose.

§ 4287. s 2. When any publication is ordered, such publication must be made daily or otherwise as often during the prescribed period as the paper is regularly issued, unless otherwise provided in this act. The court, or judge, may however, order a less number of publications during the period. How often publication to be made.

§ 4288. s 3. When it is provided in this act that any order or decree of the court, or judge, or a copy thereof, must be recorded in the office of the county recorder, from the time of filing the same for record, notice is imparted to all persons of the contents thereof. Recorded decree or order to impart notice from date of filing.

§ 4289. s 4. Citations must be delivered to the person to be cited, signed by the clerk and issued under the seal of the court, and must contain: Citation, how directed and what to contain.

1. The title of the proceeding.
2. A brief statement of the nature of the proceeding.
3. A direction that the person cited appear at a time and place specified.

§ 4290. s 5. The citation may be issued by the clerk upon the application of any party without an order of the judge, except in cases in which such order is by the provisions of this act expressly required. Citation, how issued

§ 4291. s 6. The citation must be served in the same manner as a summons in a civil action. Citation, how served.

§ 4292. s 7. When personal notice is required, and no mode of giving it is prescribed in this act, it must be given by citation. Personal notice given by citation.

§ 4293. s 8. When no other time is specially prescribed in this act, citations must be served at least five days before the return day thereof. Citation to be served five days before return.

§ 4294. s 9. When a complete description of the real property of an estate sought to be sold has been given and published in a newspaper, as required in the order to show cause why the sale should not be made, such description need not be published in any subsequent notice of sale or notice of a petition for the confirmation thereof; it is sufficient to refer One description of real estate published to be sufficient.

to the description contained in the publication of the first notice, as being proved and on file in the court.

Rules of practice generally.

§ 4295. s 10. Except as otherwise provided in this act, the provisions of the Code of Civil Procedure are applicable to and constitute the rules of practice in the proceedings mentioned in this act.

New trials.

§ 4296. s 11. The provisions of the Code of Civil Procedure relative to new trials, except in so far as they are inconsistent with the provisions of this act, apply to the proceedings mentioned in this act.

Issues joined in court, how tried and disposed of.

§ 4297. s 12. All issues of fact joined in probate proceedings must be tried in conformity with the requirements of Chapter II. of this act, and in all such proceedings the party affirming is the plaintiff, and the one denying or avoiding is defendant. Judgments therein, on the issue joined as well as for costs, may be entered and enforced by execution or otherwise by the court, as in civil actions.

New trial may be moved, how, etc.

§ 4298. s 13. Either party may move for a new trial upon the same grounds and errors, and in like manner, as provided for civil actions tried by the district court without a jury.

Court to appoint attorney for minors and absent heirs, devisees, legatees, or creditors. When and what compensation.

§ 4299. s 14. At or before the hearing of petitions and contests for the probate of wills, for letters testamentary or of administration, for sales of real estate, and confirmations thereof, settlements, partitions and distributions of estates, setting apart homesteads, and all other proceedings where all the parties interested in the estate are required to be notified thereof, the court may, in its discretion, appoint some competent attorney-at-law to represent in all such proceedings the devisees, legatees, heirs or creditors of the decedent who are minors and have no general guardian in the county, or who are non-residents of the Territory, and those interested who, though they are neither such minors or non-residents, are unrepresented. The order must specify the names of the parties so far as known for whom the attorney is appointed, who is thereby authorized to represent such parties in all such proceedings had subsequent to his appointment. The attorney may receive a fee, to be fixed by the court, for his services, which must be paid out of the funds of the estate as necessary expenses of administration, and upon distribution may be charged to the party represented by the attorney. If for any cause, it becomes necessary, the court may substitute an-

other attorney for the one first appointed, in which case the fee must be proportionately divided. The non-appointment of an attorney will not affect the validity of any of the proceedings.

§ 4300. s 15. When a judgment or decree is made, setting apart a homestead, confirming a sale, making distribution of real property, or determining any other matter affecting the title to real property, a certified copy of the same must be recorded in the office of the recorder of the county in which the property is situated.

Decree relative to homestead, effect thereof.

§ 4301. s 16. When it is not otherwise prescribed in this act, the probate court, or the district court on appeal, or the supreme court on an appeal from the district court may in its discretion order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require. Execution for the costs may issue out of the probate court.

Costs, by whom paid in certain cases.

§ 4302. s 17. Whenever an executor, administrator, or guardian is committed for contempt in disobeying any lawful order of the court, or judge, and has remained in custody for thirty days without obeying such order, or purging himself otherwise of the contempt, the court may, by order reciting the facts, and without further showing or notice, revoke his letters and appoint some other person entitled thereto executor, administrator, or guardian in his stead.

Executor, etc., to be removed when committed for contempt.

§ 4303. s 18. Whenever an infant, insane, or incompetent person has a guardian of his estate residing in this Territory, personal service upon the guardian of any process, notice, or order of the court concerning the estate of a deceased person in which the ward is interested, is equivalent to service upon the ward, and it is the duty of the guardian to attend to the interest of the ward in the matter. Such guardian may also appear for his ward and waive any process, notice, or order to show cause which an adult or a person of sound mind might do.

Service upon guardian.

§ 4304. s 19. If any person has died, or shall hereafter die, who at the time of his death was the owner of a life estate, which terminates by reason of the death of such person, any person interested in the property, or in the title thereto, in which such life estate was held, may file in the probate court of the county in which the property is situated, his verified petition, setting forth such facts, and thereupon

Termination of life estate

and after such notice by publication or otherwise, as the court may order, the court shall hear such petition and the evidence offered in support thereof, and if, upon such hearing, it shall appear that such life estate of such deceased person absolutely terminated by reason of his death, the court shall make a decree to that effect, and thereupon a certified copy of such decree may be recorded in the office of the county recorder, and thereafter shall have the same effect as a final decree of distribution so recorded.

CHAPTER XIII.

OF GUARDIAN AND WARD.

SECTION.

- 4305 Probate court to appoint guardian, when and how.
 4306 Minor may, and may not nominate guardian, when.
 4307 When appointment may be made by the judge or court.
 4308 Nomination by minor after arriving at age of fourteen years.
 4309 Father or mother entitled to guardianships.
 4310 Minor having no father or mother.
 4311 Powers and duties of guardian.

SECTION.

- 4312 Bond of guardian and its conditions.
 4313 Conditions added to duties of guardian, in order appointing.
 4314 Letters of guardianship and bond of guardian to be recorded.
 4315 Maintenance of minor out of income of his own property.
 4316 Testamentary guardian to give bond, powers limited.
 4317 Guardian, *ad litem*.

Court to appoint guardians, when and upon what petition.

§ 4305. s 1. The probate court of each county, when it appears necessary or convenient, may appoint guardians for the persons and estates, or either of them, of minors who have no guardian legally appointed by will or deed, and who are inhabitants or residents of the county, or who reside without the Territory and have estate within the county. Such appointment may be made on the petition of a relative or other person on behalf of the minor, or on the petition of the minor, if fourteen years of age. Before making such appointment, the court must cause such notice as such court deems reasonable to be given to any person having the care

of such minor, and to such relatives of the minor residing in the county as the court may deem proper.

§ 4306. s 2. If the minor is under the age of fourteen years the court may nominate and appoint his guardian. When minor may nominate guardian; when not. If he is fourteen years of age, he may nominate his guardian, and who, if approved by the court, must be appointed accordingly.

§ 4307. s 3. If the guardian nominated by the minor is not approved by the court, or if the minor resides out of the Territory, or if, after being duly cited by the court, he neglects for ten days to nominate a suitable person, the court or judge may nominate and appoint the guardian in the same manner as if the minor were under the age of fourteen years. When appointment may be made by judge.

§ 4308. s 4. When a guardian has been appointed by the court for a minor under the age of fourteen years, the minor, at any time after he attains that age, may appoint his own guardian, subject to the approval of the court. Nomination by minors after arriving at fourteen

§ 4309. s 5. The father of the minor, if living, and in case of his decease, the mother, being themselves respectively competent to transact their own business and not otherwise unsuitable, must be entitled to the guardianship of the minor. Either or mother entitled to guardianship.

§ 4310. s 6. If the minor has no father or mother living, competent to have the custody and care of his education, the guardian appointed shall have the same. Minor having no father or mother.

§ 4311. s 7. Every guardian appointed shall have the custody and care of the education of the minor, and the care and management of his estate, until such minor arrives at the age of majority or marries, or until the guardian is legally discharged. Powers and duties of guardian.

§ 4312. s 8. Before the order appointing any person guardian under this Chapter takes effect, and before letters issue, the court or the judge must require of such persons a bond to the minor, with sufficient sureties, to be approved by the judge, and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust according to law; and the following conditions shall form a part of such bond without being expressed therein: Bond of guardian, conditions of.

1. To make an inventory of all the estate, real and personal of his ward that comes to his possession or knowledge and to return the same within such time as the court or judge may order.

2. To dispose of and manage the estate according to law and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody and education of the ward.

3. To render an account, on oath, of the property, estate and moneys of the ward in his hands, and all proceeds or interests derived therefrom, and of the management and disposition of the same within three months after his appointment and at such other times as the court directs and at the expiration of his trust, to settle his accounts with the court or judge, or with the ward if he be of full age, or his legal representatives, and to pay over and deliver all the estate, moneys and effects remaining in his hands, or due from him on such settlement, to the person who is lawfully entitled thereto. Upon filing the bond, duly approved, letters of guardianship must issue to the person appointed. In form, the letters of guardianship must be substantially the same as letters of administration, and the oath of the guardian must be indorsed thereon, that he will perform the duties of his office as such guardian according to law.

Conditions
may be in-
serted in
order appoint-
ing guardian.

§ 4313. s 9. When any person is appointed guardian of a minor, the probate court, or judge, may, with the consent of such person, insert in the order of appointment conditions not otherwise obligatory, providing for the care, treatment, education and welfare of the minor. The performance of such conditions shall be a part of the duties of the guardian for the faithful performance of which he and the sureties on his bond shall be responsible.

Letters of
guardianship,
and bond to
be recorded.

§ 4314. s 10. All letters of guardianship issued and all guardians' bonds executed under the provisions of this Chapter, with the affidavits and certificates thereon, must be recorded by the clerk of the probate court having jurisdiction of the persons and estates of the wards.

Maintenance
of minor out
of income of
his own prop-
erty.

§ 4315. s 11. If any minor having a father living has property, the income of which is sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as judged reasonable, and must be directed by the probate court; and the charges therefor may

be allowed accordingly, in the settlement of the account of his guardian.

§ 4316. s 12. Every testamentary guardian must give bond and qualify, and has the same powers and must perform the same duties, with regard to the person and estate of his ward, as guardians appointed by the probate court, except so far as their powers and duties are legally modified, enlarged or changed by the will by which such guardian was appointed.

§ 4317. s 13. Nothing contained in this Chapter affects or impairs the power of any court to appoint a guardian to defend the interests of any minor interested in any suit or matter pending therein.

GUARDIANS OF INSANE AND INCOMPETENT PERSONS.

SECTION.

4318 Guardian of insane and other incompetent persons.

4319 Appointment by probate court.

SECTION.

4320 Powers and duties of such guardian.

4321 Petition for restoration of insane, etc., person to capacity.

§ 4318. s 14. Where it is represented to the probate judge upon verified petition of any relative or friend, that any person is insane, or from any cause mentally incompetent to manage his property, the judge or court must cause a notice to be given to the supposed insane or incompetent person, of the time and place of hearing the case, not less than five days before the time so appointed, and such person, if able to attend, must be produced on the hearing.

§ 4319. s 15. If, after a full hearing and examination upon such petition, it appears to the probate court that the person in question is incapable of taking care of himself and managing his property, such court must appoint a guardian of his person and estate, with the powers and duties in this Chapter specified.

§ 4320. s 16. Every guardian appointed as provided in the preceding section has the care and custody of the person

Powers and
duties of such
guardians.

of his ward, and the management of all his estate until such guardian is legally discharged; and he must give bond to such ward, in like manner and with like conditions as before prescribed with respect to the guardian of a minor.

Petition for
restoration to
capacity.

§ 4321. s 17. Any person who has been declared insane or incompetent, or the guardian, or any relative of such person within the third degree, or any friend, may apply, by petition, to the probate court of the county in which he was declared insane, to have the fact of his restoration to capacity judicially determined. The petition shall be verified, and shall state that such person is then sane and competent. Upon receiving the petition the court must appoint a day for a hearing before the court, and, if the petitioner request it, shall order an investigation before the court. The court shall cause notice of the trial to be given to the guardian of the person so declared insane or incompetent, if there be a guardian, and to his or her husband or wife, if there be one, and to his or her father or mother, if living in the county. On the trial, the guardian or relative of the person so declared insane or incompetent, and in the discretion of the court, any other person may contest the right to the relief demanded. Witnesses may be required to appear and testify as in civil cases and may be called and examined by the court on its own motion. If it be found that the person be of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged, and the guardian of such person, if such person be not a minor, shall cease.

THE POWERS AND DUTIES OF GUARDIANS.

SECTION.

4322 Guardian to pay debts of ward out of ward's property.
 4323 Guardian to receive debts due ward, and represent him in legal proceedings, except when.
 4324 Guardian to manage the estate, sell property and maintain ward
 4325 Maintenance, support and education of ward, how enforced.

SECTION.

4326 Guardians may assent to partition of ward's real estate.
 4327 Guardian to return inventory of ward's estate, and same must be appraised.
 4328 Settlement of guardians.
 4329 Allowance of account of joint guardians.
 4330 Expense and compensation of guardians.

§ 4322. s 18. Every guardian appointed under the provisions of this Chapter, whether for a minor or any other person, must pay all just debts due from the ward out of his personal estate and the income of his real estate, if sufficient; if not then out of his real estate, upon obtaining an order for the sale thereof, and disposing of the same in the manner provided in this Title for the sale of real estate of decedents.

Guardian to pay debts of ward out of ward's estate.

§ 4323. s 19. Every guardian must settle all accounts of the ward, and demand, sue for and receive all debts due to him, or may, with the approbation of the court, compound for the same and give discharges to the debtor, on receiving a fair and just dividend of his estate and effects; and he must appear for and represent his ward in all legal suits and proceedings, unless another person be appointed for that purpose.

Guardian to recover debts due his ward and represent him.

§ 4324. s 20. Every guardian must manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining an order of the court therefor, as provided, and must apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward and his family, if there be any.

Guardian to manage his estate, maintain ward, and sell real estate.

§ 4325. s 21. When a guardian has advanced for the necessary maintenance, support, or education of his ward, an amount not disproportionate to the value of his estate, or

Maintenance, support and education of ward, how enforced

his condition of life, and the same is made to appear to the satisfaction of the court, by proper vouchers and proofs, the guardian must be allowed credit therefor in his settlements. Whenever a guardian fails, neglects or refuses to furnish suitable and necessary maintenance, support or education for his ward, the court may order him to do so, and enforce such order by proper process. Whenever any third person, at his request, supplies a ward with such suitable and necessary maintenance, support or education, and it is shown to have been done after refusal or neglect of the guardian to supply the same, the court may direct the guardian to pay therefor out of the estate, and enforce such payment by due process.

May assent to
a partition of
real estate.

§ 4326. s 22. The guardian may join in and assent to a partition of the real estate of the ward, whenever such assent may be given by any person.

Guardian to
return inven-
tory of estate
of ward.

§ 4327. s 23. Every guardian must return to the probate court an inventory of the estate of his ward within three months after his appointment, and annually thereafter. When the value of the estate exceeds the sum of twenty thousand dollars, semi-annual returns must be made to the probate court. The probate court may, upon application made for that purpose by any person, compel the guardian to render an account to the probate court of the estate of his ward. The inventories and accounts so to be returned or rendered, must be sworn to by the guardian. All the estate of the ward described in the first inventory must be appraised by appraisers appointed, sworn and acting in the manner provided for regulating the settlement of the estates of decedents; such inventory, with the appraisement of the property therein described, must be recorded by the clerk of the probate court in a proper book kept in his office for that purpose. Whenever any other property of the estate of any ward is discovered, not included in the inventory of the estate already returned, and whenever any other property has been succeeded to, or acquired by any ward for his benefit, the like proceedings must be had for the return and appraisement thereof that are herein provided in relation to the first inventory and return.

Appraisers to
be appointed,
etc.

Settlement of
guardians.

§ 4328. s 24. The guardian must, upon the expiration of a year from the time of his appointment, and as often thereafter as he may be required, present his account to the probate court for settlement and allowance.

§ 4329. s 25. When an account is rendered by two or more joint guardians, the court may, in its discretion, allow the same upon the oath of any of them. Allowance of account of joint guardians.

§ 4330. s 26. Every guardian must be allowed the amount of his reasonable expense incurred in the execution of his trust, and he must also have such compensation for his services as the court in which his accounts are settled deems just and reasonable. Expenses and compensation of guardians.

THE SALE OF PROPERTY AND DISPOSITION OF THE PROCEEDS.

SECTION.	SECTION.
4331 Guardian may sell ward's property, when.	4340 Costs may be awarded to whom.
4332 Sale of real estate to be upon order of court.	4341 Order of sale shall specify, what.
4333 Application of proceeds of sale.	4342 Bond before selling.
4334 Investment of proceeds of sale.	4343 All proceedings for sale by guardian, to conform to provisions relating to estate of deceased.
4335 Order of sale, how obtained.	4344 Limits of order of sale.
4336 Notice to next of kin, how given.	4345 Conditions of sales of real estate of ward.
4337 Copy of order to be served, published, or consent filed.	4346 Court may order investment of money of ward.
4338 Hearing the application.	
4339 Who may be examined on such hearing.	

§ 4331. s 27. When the income of an estate under guardianship is insufficient to maintain the ward and his family, or to maintain and educate the ward when a minor, his guardian may sell his real or personal estate for that purpose upon obtaining an order therefor. May sell property in certain cases.

§ 4332. s 28. When it appears to the satisfaction of the court, upon the petition of the guardian, that for the benefit of his ward his real estate, or some part thereof, should be sold and the proceeds thereof put out at interest, or invested in some productive property, or in the improvement or security of any other real estate of the ward, his guardian may sell the same for such purpose, upon obtaining an order therefor. Sale of real estate to be made upon order of court.

Application of
proceeds of
sales.

§ 4333. s 29. If the estate is sold for the purposes mentioned in this Chapter, the guardian must apply the proceeds of the sale to such purposes, as far as necessary, and put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital is wanted for the maintenance of the ward and his family, or the education of his children, or for the education of the ward when a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

Investment of
proceeds of
sales.

§ 4334. s 30. If the estate is sold for the purposes of putting out or investing the proceeds, the guardian must make the investment according to his best judgment, or in pursuance of any order that may be made by the court.

Order for sale,
how obtained.

§ 4335. s 31. To obtain an order for such sale, the guardian must present to the court in which he was appointed guardian, a verified petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale.

Notice to
next of kin,
how given.

§ 4336. s 32. If it appears to the court from the petition, that it is necessary, or would be beneficial to the ward that the real estate, or some part of it, should be sold, or that the real or personal estate should be sold, the court must thereupon make an order, directing the next of kin of the ward, and all persons interested in the estate, to appear before the court, at a time and place therein specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted for the sale of such estate. If it appear that it is necessary, or would be beneficial to the ward to sell the personal estate or some part of it, the court must order the sale to be made.

Copy of order
to be served,
published, or
consent filed.

§ 4337. s 33. A copy of the order must be personally served on the next of kin of the ward and on all persons interested in the estate, at least ten days before the hearing of the petition, or must be published at least three successive weeks in a newspaper having general circulation in the county, or in such newspaper as may be specified by the court in the order. If written consent to making the order of sale is subscribed by all persons interested therein, and the next of kin, notice need not be served or published.

§ 4338. s 34. The probate court, at the time and place Hearing of application. appointed in the order, or such other time to which the hearing is postponed, upon proof of the service or publication of the order, must hear and examine the proofs and allegations of the petitioner and of the next of kin, and all other persons interested in the estate who oppose the application.

§ 4339. s 35. On the hearing, the guardian may be Who may be examined on such hearing. examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the probate court in the same manner and with like effect as in other cases provided for by law.

§ 4340. s 36. If any person appears and objects to the Costs to be awarded, to whom. granting of any order prayed for under the provisions of this Chapter, and it appears to the court that either the petition or the objection thereto is sustained, the court may, in granting or refusing the order, award costs to the party prevailing, and enforce the payment thereof.

§ 4341. s 37. If, after a full examination, it appears Order of sale, to specify what. necessary, or for the benefit of the ward, that his real estate, or some part thereof, should be sold, the court may grant an order therefor, specifying therein the causes or reasons why the sale is necessary or beneficial, and may, if the same has been prayed for in the petition, order such sale to be made either at public or private sale.

§ 4342. s 38. Every guardian authorized to sell real Bond before selling. estate must, before the sale, give bond to the ward, with sufficient surety, to be approved by the court, or judge, with condition to sell the same in the manner, and to account for the proceeds of the sale, as provided for in this Chapter, and in Chapter VII. of this act.

§ 4343. s 39. All the proceedings under petition of All proceedings for sale by guardians to conform to provisions relating to estates of decedents. guardians for sales of property of their wards, giving notice, and the hearing of such petitions, granting or refusing the order of sale, directing the sale to be made at public or private sale, re-selling the same property, return of sale, and application for confirmation thereof, notice and hearing of such application, making orders rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, accounting and the settlement of accounts, must be had and made as required by the provisions of this

act concerning estates of decedents, unless otherwise specially provided in this Chapter.

Limit of order
of sale.

§ 4344. s 40. No order of sale, granted in pursuance of this Chapter, continues in force more than one year after granting the same, without a sale being had.

Conditions of
sales of real
estate of
wards.

§ 4345. s 41. All sales of real estate of wards must be for cash, or for part cash and part deferred payments, the credit in no case to exceed three years from date of sale, as in the discretion of the court is most beneficial to the ward. Guardians making sales must demand and receive from the purchasers, in case of deferred payments, notes and a mortgage on the real estate sold, with such additional security as the court deems necessary and sufficient to secure the prompt payment of the amount so deferred, and the interest thereon.

Court may
order the in-
vestment of
money of the
ward.

§ 4346. s 42. The court, on the application of a guardian or any person interested in the estate of any ward, after such notice to persons interested therein as the court shall direct, may authorize and require the guardian to invest the proceeds of sales, and any other of his ward's money in his hands, in real estate, or in any other manner most to the interest of all concerned therein, and the court may make such other orders and give such directions as are needful for the management, investment and disposition of the estate and effects as circumstances require.

NON-RESIDENT GUARDIANS AND WARDS.

SECTION.

- 4347 Guardian of non-residents; powers.
- 4348 Powers and duties of such guardian.
- 4349 Such guardian to give bond.
- 4350 To what such guardianship shall extend.

SECTION.

- 4351 Removal of non-resident ward's property.
- 4352 Proceedings for such removal.
- 4353 Discharge of persons in possession.

§ 4347. s 43. When a person liable to be put under guardianship, according to the provisions of this Chapter, re-

sides without this Territory and has estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the probate court of any county in which there is any estate of such absent person, for the appointment of a guardian, and if, after notice given to all interested, in such manner as such court orders, by publication or otherwise, and a full hearing and examination it appears proper, a guardian for such absent person may be appointed.

Guardians of
non-resident
persons.

§ 4348. s 44. Every guardian appointed under the preceding section, has the same powers and performs the same duties with respect to the estate of the ward found within this Territory, and with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian appointed under this Chapter.

Powers and
duties of such
guardians.

§ 4349. s 45. Every guardian must give bond to the ward in the manner and with the like conditions as hereinbefore provided for other guardians, except that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian must be confined to such estate and effects as come to his hands in this Territory.

Such guardian
must give
bonds.

§ 4350. s 46. The guardianship which is first lawfully granted of any person residing without this Territory, extends to all the estate of the ward within this Territory, and excludes the jurisdiction of the probate court of every other county.

To what
guardianship
shall extend.

§ 4351. s 47. When the guardian and his ward are both non-residents, and the ward is entitled to property in this Territory, which may be removed to any State or foreign country, without conflict with any restriction or limitation thereupon, or impairing the right of the ward thereto such property may be removed to the State or foreign country of the residence of the ward, upon the application of the guardian to the probate judge of the county in which the estate of the ward, or the principal part thereof, is situated.

Removal of
non-resident
ward's prop-
erty.

§ 4352. s 48. The application must be made upon ten days' notice to the resident executor, administrator or guardian, if there be such, and upon such application the non-resident guardian must produce and file a certificate, under

Proceedings
for such re-
moval.

the hand of the clerk and seal of the court from which his appointment was derived, showing:

1. A transcript of the record of his appointment.
2. That he entered upon the discharge of his duties.

3. That he is entitled, by the law of the State or foreign country, of his appointment, to the possession of the estate of the ward; or must produce and file a certificate under the hand and seal of the clerk of the court having jurisdiction in the county of his residence, of the estates of persons under guardianship, or of the highest court of such country, attested by a minister, consul, or vice-consul of the United States, resident in such country, that by the laws of such country, the applicant is entitled to the custody of the estate of his ward, without the appointment of any court. Upon such application, unless good cause to the contrary is shown, the court must make an order granting to such guardian leave to take and remove the property of his ward to the State or place of his residence, which is authority to him to sue for and receive the same in his own name for the use and benefit of his ward.

Discharge of
person in pos-
session.

§ 4353. s 49. Such order is a discharge of the executor, administrator, local guardian, or other person in whose possession the property may be at the time the order is made, on filing with the court the receipt therefor of the foreign guardian of such ward.

GENERAL AND MISCELLANEOUS PROCEEDINGS.

SECTION.

SECTION.

- | | |
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| 4354 Defrauding ward, persons suspected, examination. | 4360 Limitation of action for recovery of property sold. |
| 4355 Removal and resignation of guardian, and surrender of estate. | 4361 More than one guardian of the person may be appointed. |
| 4356 Guardianship how terminated. | 4362 Power of judge at chambers. |
| 4357 New bond, when required. | 4363 Provisions of Code of Civil Procedure to apply. |
| 4358 Guardian's bond to be filed, action thereon. | 4364 Repealing and saving clause. |
| 4359 Limitation of action on guardian's bond. | 4365 When act takes effect; March 12, 1884. |

§ 4354. s 50. Upon complaint made to him by any guardian, ward, creditor or other person interested in the estate or having a prospective interest therein as heir or otherwise, against any one suspected of having concealed, embezzled, or conveyed away any of the money, goods, or effects, or an instrument in writing belonging to the ward or to his estate, the probate court, or judge, may cite such suspected person to appear before such court, and may examine and proceed with him on such charge in the manner provided in this act with respect to persons suspected of and charged with concealing or embezzling the effects of a decedent.

Examination of persons suspected of defrauding ward, or, etc.

§ 4355. s 51. When the guardian, appointed either by the testator or a court, becomes insane or otherwise incapable of discharging his trust or unsuitable therefor, or has wasted or mismanaged the estate, or failed for thirty days to render an account or make a return, the probate court may, upon such notice to the guardian as the court may require, remove him and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto. Every guardian may resign when it appears proper to allow the same; and upon the resignation or removal of a guardian, as herein provided, the court may appoint another in the place of the guardian who resigned or was removed.

Removal and resignation of guardian and surrender of estate.

Guardianship, how terminated.

§ 4356. s 52. The marriage of a minor ward terminates the guardianship of the person of such ward, but not the estate; and the guardian of an insane or other person may be discharged by the court, when it appears, on the application of the ward or otherwise, that the guardianship is no longer necessary.

New bond, when required.

§ 4357. s 53. The court may require a new bond to be given by a guardian whenever such court deems it necessary, and may discharge the existing sureties from further liability, after due notice given as such court may direct when it shall appear that no injury can result therefrom to those interested in the estate.

Guardian's bond to be filed. Action on.

§ 4358. s 54. Every bond given by a guardian must be filed and preserved in the office of the clerk of the probate court of the county; and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward or of any person interested in the estate.

Limitation of action on guardian's bond.

§ 4359. s 55. No action can be maintained against the sureties on any bond given by a guardian, unless it be commenced within three years from the discharge or removal of the guardian; but if at the time of such discharge the person entitled to bring such action is under any legal disability to sue, the action may be commenced at any time within one year after such disability is removed.

Limitations of action for the recovery of property sold.

§ 4360. s 56. No action for the recovery of any estate sold by a guardian can be maintained by the ward, or by any person claiming under him, unless it is commenced within three years next after the termination of the guardianship, or when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within one year next after the removal thereof.

More than one guardian of a person may be appointed.

§ 4361. s 57. The court, in its discretion, whenever necessary, may appoint more than one guardian of any person subject to guardianship, who must give bond and be governed and liable in all respects as a sole guardian.

Power of judge at chambers.

§ 4362. s 58. Any order appointing a guardian must be entered as, and become a decree of the court. The provisions of this act relative to the estates of decedents, so far as they relate to the practice in the probate courts apply to proceedings under this Chapter.

§ 4363. s 59. The general provisions of the Code of Civil Procedure relative to the qualification and justification of sureties on undertakings are hereby declared to apply to guardians appointed by the court, and to the bonds taken or to be taken from such guardians, and to the sureties on such bonds.

§ 4364. s 60. Chapter III. of Title XIV. of the Compiled Laws of Utah, entitled "Of the Proceedings in Probate Courts," and all amendments thereto, and Chapter II. of "An Act in relation to Guardian and Ward," approved February 20th, 1880, are hereby repealed, saving and excepting all rights and rights of action which have accrued, or may accrue under or by virtue of any of the provisions hereby repealed. All proceedings commenced, and all orders and decrees made, by virtue of any of the provisions of any law referred to in this section before this act takes effect, shall be continued and shall be made to conform as far as practicable to the provisions of this act.

§ 4365. s 61. This act shall take effect and be in force on the first day of August, A. D. 1884.

[Approved, March 12, 1884.]

Provisions of
Code of Civil
Procedure,
etc., to apply.
Repealing and
saving clauses.

When act
takes effect.

PART TWELFTH.

PENAL CODE.

PRELIMINARY PROVISIONS.

AN ACT TO ESTABLISH A PENAL CODE.

SECTION.	SECTION.
4366 Penal Code.	4377 Witness' testimony may be read against him on prosecution for perjury.
4367 When this act takes effect.	4378 "Crime" and "public offence" defined.
4368 Not retroactive.	4379 Crimes, how divided.
4369 Construction of the Penal Code.	4380 "Felony" and "misdemeanor" defined.
4370 Effect of the Code upon past offences.	4381 Punishment of felony, when not otherwise prescribed.
4371 Certain terms defined in the senses in which they are used in this Code.	4382 Punishment of misdemeanor, when not otherwise prescribed.
4372 What intent to defraud is sufficient.	4383 To constitute crime, there must be unity of act and intent.
4373 Civil remedies preserved.	4384 Intent how manifested, and who considered of sound mind.
4374 Authority of courts martial preserved. Courts of justice to punish for contempts.	4385 Drunkenness no excuse for crime; when it may be considered.
4375 Of sections declaring crimes punishable; duty of court.	4386 This act, how cited.
4376 Punishments, how determined.	

Feb. 18, 1876. Penal Code. § 4366. (1831) Be it enacted, etc., That this act shall be known as "The Penal Code of Utah."

When this act takes effect. § 4367. (1832) This Code takes effect at twelve o'clock, noon, on the fourth day of March, eighteen hundred and seventy-six.

Not retro active. § 4368. (1833) No part of it is retroactive unless expressly so declared.

§ 4369. ⁽¹⁸³⁴⁾ The rule of the common law that penal statutes are to be strictly construed has no application to this Code; all its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice.

§ 4370. ⁽¹⁸³⁶⁾ No act or omission commenced after twelve o'clock noon of the day on which this Code takes effect as a law, is criminal or punishable, except as prescribed or authorized by this Code, or by some of the statutes then in force; or by some ordinance, county, city or precinct regulation passed or adopted under such statutes and in force when this Code takes effect; any act or omission commenced prior to that time may be inquired of, prosecuted and punished in the same manner as if this Code had not been passed.

§ 4371. ⁽¹⁸³⁶⁾ Whenever the terms mentioned in this section are employed in the Penal Code, they are employed in the senses hereafter affixed to them, except where a different sense plainly appears:

1. The term "wilfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law or to injure another, or to acquire any advantage.

2. The terms "neglect," "negligence," "negligent" and "negligently," import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

3. The term "corruptly," imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

4. The terms "malice" and "maliciously," import a wish to vex, annoy or injure another person, established either by proof or presumption of law.

5. The term "knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of the Code. It does not require any knowledge of the unlawfulness of such act or omission.

6. The term "bribe" signifies any money, goods, right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given or accepted, with a corrupt intent to influence,

Construction
of the Penal
Code.

Effect of Code
upon past
offences.

Certain terms
defined in the
senses in
which they are
used in this
Code.

unlawfully, the person to whom it is given in his action, vote or opinion in any public or official capacity.

7. The word "vessel" when used with reference to shipping, includes steamboats, canal boats, and every structure adopted to be navigated from place to place.

8. The term "signature" includes any name, mark, or sign written with the intent to authenticate any instrument or writing.

9. The term "writing" includes both printing and writing.

10. The term "land" and the phrases "real estate" and "real property," include lands, tenements and hereditaments, and all rights thereto and interest therein.

11. The term "personal property" includes every description of money, goods, chattels, effects, evidences of rights in action, and all written instruments by which any pecuniary obligation, right or title to property is created, acknowledged, transferred, increased, defeated, discharged or diminished and every right or interest therein.

12. The word "property" includes personal and real property.

13. The word "month" means a calendar month unless otherwise expressed, and the word "year" and also the abbreviation "A. D." is equivalent to the expression "year of our Lord."

14. The word "oath" includes "affirmation" in all cases where an affirmation may be substituted for an oath; and in like cases the word "swear" includes the word "affirm." Every mode of oral statement under oath or affirmation is embraced in the term "testify," and every written one, in the term "depose."

15. When the seal of a court or public officer or officers is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, as well as upon wax or a wafer affixed thereto.

16. The word "State," when applied to the different parts of the United States, includes the District of Columbia and the Territories, and the words "United States" may include the District and Territories.

17. When the term "person" is used in this Code to designate the party whose property may be the subject of any offence, it includes this Territory, any State, govern-

ment or county which may lawfully own any property within this Territory, and all public and private corporations or joint associations, as well as individuals.

18. The word "person" includes bodies politic and corporate.

19. The singular number includes the plural, and the plural the singular.

20. Words used in the masculine gender comprehend, as well, the feminine and neuter.

21. Words used in the present tense include the future, but exclude the past.

22. The word "will" includes codicils.

23. Words and phrases must be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning.

24. Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it be otherwise expressed in the act giving the authority.

§ 4372. (1887) Whenever, by any of the provisions of this Code, an intent to defraud is required in order to constitute any offence, it is sufficient if an intent appears to defraud any person, association or body politic or corporate whatever. What intent to defraud is sufficient.

§ 4373. (1888) The omission to specify or affirm in this Code any liability to damages, penalty, forfeiture, or other remedy imposed by law and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same. Civil remedies preserved.

§ 4374. (1889) This Code does not affect any power conferred by law upon any court martial or other military authority or officer, to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal, or officer, to impose or inflict punishment for a contempt. Authority of courts martial preserved.

§ 4375. (1840) The several sections of this Code which declare certain crimes to be punishable as therein mentioned devolve a duty upon the court authorized to pass Of sections declaring crimes punishable; duty of court.

sentence, to determine and impose the punishment prescribed.

Punishments
how deter-
mined.

§ 4376. (1841) Whenever in this Code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the court authorized to pass sentence, within such limits as may be prescribed by this Code.

Witness' test:
mony may be
read against
him on prose-
cution for per-
jury.

§ 4377. (1842) The various sections of this Code which declare that evidence obtained upon the examination of a person as a witness cannot be received against him in any criminal proceedings, do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination.

Crime and
public offence
defined.

§ 4378. (1843) A crime or public offence is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

1. Death.
2. Imprisonment.
3. Fine.
4. Removal from office; or,
5. Disqualification to hold and enjoy any office of honor, trust or profit in this Territory.

Crimes, how
divided.

§ 4379. (1844) Crimes are divided into:

1. Felonies; and,
2. Misdemeanors.

Felony and
misdemeanor
defined.

§ 4380. (1845) A felony is a crime which is, or may be punishable with death, or by imprisonment in the penitentiary. Every other crime is a misdemeanor.

Punishment
of felony
when not
otherwise pre-
scribed.

§ 4381. (1846) Except in cases where a different punishment is prescribed by this Code, every offence declared to be a felony is punishable by imprisonment in the penitentiary not exceeding five years.

Punishment of
misdemeanor
when not
otherwise pre-
scribed.
Amended Feb.
18, 1878.

§ 4382. (1847) Except in cases where a different punishment is prescribed by this Code, every offence declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six months; or by a fine in any sum not less than three hundred dollars, or by both.

To constitute
crime there
must be unity
of act and in-
tent

§ 4383. (1848) In every crime or public offence there must exist a union, or joint operation of act and intent, or criminal negligence.

§ 4384. (1849) The intent or intention is manifested by ^{intent, how} the circumstances connected with the offence, and the ^{manifested} sound mind and discretion of the accused. All persons ^{and who con-} are of sound ^{sidered of} mind who are neither idiots nor lunatics, nor affected with insanity.

§ 4385. (1846) No act committed by a person while in a ^{Drunkenness} state of voluntary intoxication is less criminal by reason of ^{no excuse for} his having been in such condition. But whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the ^{When it may} fact that the accused was intoxicated at the time, in determin- ^{be considered} ing the purpose, motive or intent with which he committed the act.

§ 4386. (1841) This act whenever cited, enumerated, re- ^{This act how} ferred to or amended, may be designated simply as the Penal ^{cited} Code, adding when necessary the number of the section.

TITLE I.

OF CRIMES AND PUNISHMENTS.

SECTION.

4387 Who are capable of committing crimes.

SECTION.

4388 Who are liable to punishment.

§ 4387. (1852) All persons are capable of committing ^{Who are ca-} crimes, except those belonging to the following classes: ^{pable of com-}

1. Children under the age of seven years.
2. Children between the ages of seven years and four- ^{mitting} teen years in the absence of clear proof that at the time of ^{crimes.} committing the act charged against them they knew its wrongfulness.
3. Idiots.
4. Lunatics and insane persons.

5. Persons who committed the act or made the omission charged, under an ignorance or mistake of fact which disproves any criminal intent.

6. Persons who committed the act charged without being conscious thereof.

7. Persons who committed the act or made the omission charged, through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence.

8. Married women (unless the crime be punishable with death) acting under the threats, command or coercion of their husbands.

9. Persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to, and did believe their lives would be endangered if they refused.

Who are liable
to punish-
ment.

§ 4388. — The following persons are liable to punishment under the laws of this Territory:

1. All persons who commit in whole or in part any crime within this Territory.

2. All who commit larceny or robbery out of this Territory and bring to, or are found with, the property stolen, in this Territory.

3. All who, being out of this Territory, cause or aid, advise and encourage, another person to commit a crime within this Territory and are afterwards found therein.

TITLE II.

OF PARTIES TO CRIME.

SECTION.

4389 Classification of parties to crime.

4390 Who are principals.

SECTION.

4391 Who are accessories.

4392 Punishment of accessories.

§ 4389. (1864) The parties to crimes are classified as: Classification of parties to crime.

1. Principals; and

2. Accessories.

§ 4390. (1855) All persons concerned in the commission Who are principals. of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offence, or aid and abet in its commission, or not being present, have advised and encouraged its commission, and all persons counseling, advising or encouraging children under the age of fourteen years, lunatics or idiots, to commit any crime, or who, by fraud, contrivance or force occasion the drunkenness of another for the purpose of causing him to commit any crime, or who, by threats, menaces, command or coercion compel another to commit any crime, are principals in any crime so committed.

§ 4391. (1856) All persons, who after full knowledge Who are accessories. that a felony has been committed, conceal it from the magistrate, or harbor and protect the person charged with or convicted thereof, are accessories.

§ 4392. (1857) Except in cases where a different punishment is prescribed, an accessory is punishable by imprisonment in the penitentiary not exceeding three years; or in the county jail, not exceeding one year; or by fine not exceeding one thousand dollars. Punishment of accessories.

TITLE III.

OF CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE TERRITORY.

SECTION.	SECTION.
4393 Acting in a public capacity without having qualified.	4399 Fraudulently presenting bills or claims to public officers for allowance or payment.
4394 Acts of officers de facto not affected.	4400 Buying appointments to office.
4395 Giving or offering bribes to executive officers.	4401 Taking rewards for deputation.
4396 Asking or receiving bribes.	4402 Exercising functions of office wrongfully.
4397 Resisting officers.	4403 Refusal to surrender books, etc., to successor.
4398 Extortion.	

Acting in a public capacity without having qualified.

§ 4393. (1888) Every person who exercises any of the functions of a public office without having taken and filed the oath of office, or without having executed and filed the required bond, is guilty of a misdemeanor.

Acts of officers de facto not affected.

§ 4394. (1890) The last section shall not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where other persons than himself are interested in maintaining the validity of such acts.

Giving or offering bribes to executive officers.

§ 4395. (1890) Every person who gives or offers any bribe to any executive officer of this Territory, with intent to influence him in respect to any act, decision, vote, opinion or other proceeding as such officer, is guilty of a felony.

Asking or receiving bribes.

§ 4396. (1891) Every executive officer, or person elected or appointed to an executive office, who asks, receives or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion, or action upon any matter then pending, or which may be brought before him in his official capacity, shall be influenced thereby, is guilty of felony.

Resisting officers.

§ 4397. (1892) Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer in the performance of his duty, is punishable by

fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding one year.

§ 4398. ⁽¹⁸⁶⁶⁾ Every executive officer who asks or receives any emolument, gratuity, or reward, or any promise thereof, excepting such as may be authorized by law, for doing any official act, is guilty of a misdemeanor. Extortion.

§ 4399. ⁽¹⁸⁶⁴⁾ Every person who with intent to defraud, presents for allowance or for payment to any county court, auditor of public accounts, city council, or other officer authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of a misdemeanor. Fraudulently presenting bills or claims to public officers for allowance or payment.

§ 4400. ⁽¹⁸⁶⁷⁾ Every person who gives or offers any gratuity or reward, in consideration that he or any other person shall be appointed to any public office, or shall be permitted to exercise or discharge the duties thereof, is guilty of a misdemeanor. Buying up appointments to office.

§ 4401. ⁽¹⁸⁶⁷⁾ Every public officer, who, for any gratuity or reward, appoints another person to a public office, or presents another person to exercise or discharge any of the duties of his office, is punishable by a fine not exceeding one thousand dollars. Taking rewards for deputation.

§ 4402. ⁽¹⁸⁶⁷⁾ Every person who wilfully and knowingly intrudes himself into any public office to which he has not been elected or appointed, and every person who, having been an executive officer, wilfully exercises any of the functions of his office after his term has expired and a successor has been elected or appointed, and has qualified, is guilty of a misdemeanor. Exercising functions of office wrongfully.

§ 4403. ⁽¹⁸⁶⁸⁾ Every officer whose office is abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he has resigned or been legally removed from office, wilfully or unlawfully withholds or detains from his successor or other person entitled thereto the records, papers, documents, or other writing appertaining or belonging to his office, or mutilates, destroys, or takes away the same, is guilty of a felony. Refusal to surrender books, etc., to successor.

TITLE IV.

OF CRIMES AGAINST PUBLIC JUSTICE.

- CHAPTER I. Bribery and corruption.
 CHAPTER II. Rescues.
 CHAPTER III. Escapes and aiding therein.
 CHAPTER IV. Forging, stealing, mutilating and falsifying judicial and public records and documents.
 CHAPTER V. Perjury and subornation of perjury.
 CHAPTER VI. Falsifying evidence.
 CHAPTER VII. Other offences against public justice.
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CHAPTER I.

BRIBERY AND CORRUPTION.

SECTION.

- 4401 Giving bribes to judges, jurors, referees, etc.
 4405 Receiving bribes by judicial officers, jurors, etc.
 4406 Extortion.
 4407 Improper attempts to influence jurors, referees, etc.

SECTION.

- 4408 Misconduct of jurors, referees, etc.
 4409 Justice or constable purchasing judgment.
 4410 Officers to forfeit and be disqualified from holding office.

Giving bribes to judges, jurors, referees, etc.

§ 4401. (1860) Every person who gives or offers to give a bribe or attempts corruptly to influence any judicial officer, juror, referee, arbitrator, or umpire, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion, or decision upon any matter or question which is or may be brought before him for decision, is guilty of a felony.

Receiving bribes by judicial officers, jurors, etc.

§ 4405. (1870) Every judicial officer, juror, referee, arbitrator or umpire, and every person authorized by law to hear or determine any question or controversy, who asks or re-

ceives, or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, shall be influenced thereby, is guilty of a felony.

§ 4406. (1871) Every judicial officer who asks or receives Extortion. any emolument, gratuity or reward, or any promise thereof, except such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

§ 4407. (1872) Every person who corruptly attempts to Improper attempt to influence jurors, referees, etc. influence a juror, or any person summoned or drawn as a juror, or chosen as an arbitrator or umpire, or appointed a referee, in respect to his verdict in, or decision of, any cause pending or about to be brought before him, is guilty of a misdemeanor.

§ 4408. (1872) Every juror or person drawn or summoned as a juror, or chosen arbitrator or umpire or appointed referee who either: Misconduct of jurors, referees, etc.

1. Makes any promise or agreement to give a verdict or decision for or against any party; or,

2. Wilfully and corruptly permits any communication to be made to him, or receives any book, papers, instrument or information relating to any cause pending before him, except according to the regular course of proceedings upon the trial of such cause, is punishable by fine not exceeding one thousand dollars, or by imprisonment in the penitentiary not exceeding one year.

§ 4409. (1874) Every justice of the peace or constable of the same precinct, who purchases or is interested in the purchase of any judgment or part thereof, on the docket of, or on any docket in possession of such justice, is guilty of a misdemeanor. Justice or constable purchasing judgment.

§ 4410. (1875) Every officer convicted of any crime defined in this Chapter, in addition to the punishment prescribed, forfeits his office. Officers to forfeit office.

CHAPTER II.

RESCUES.

SECTION.

4411 Rescuing prisoners, punishment for.

SECTION.

4412 Retaking goods from custody of officers.

Rescuing
prisoners,
punishment
for.

§ 4411. ⁽¹⁸⁷⁶⁾ Every person who rescues or attempts to rescue, or aids another person in rescuing or attempting to rescue, any prisoner from any prison, or from any officer or person having him in lawful custody, is punishable as follows:

1. If such prisoner was in custody upon a conviction of felony punishable with death, with imprisonment in the penitentiary not less than one nor more than five years.

2. If such prisoner was in custody upon a conviction of any other felony, by imprisonment in the penitentiary not less than six months nor more than one year.

3. If such prisoner was in custody upon a charge of felony, by fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding one year or by both.

4. If such prisoner was in custody otherwise than upon a charge or conviction of felony, by a fine in any sum less than three hundred dollars or imprisonment in the county jail not exceeding six months, or by both.

As amended
Feb. 18, 1878.

Retaking
goods from
custody of
officers.

§ 4412. ⁽¹⁸⁷⁷⁾ Every person who wilfully injures or destroys, or takes or attempts to take, or assists any person in taking or attempting to take, from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor.

CHAPTER III.

ESCAPES AND AIDING THEREIN.

SECTION.

4413 Officers suffering convicts to escape.
4414 Assisting prisoners to escape.

SECTION.

4415 Carrying into prison things useful to aid in an escape.

§ 4413. (1878) Every keeper of a prison, sheriff, deputy sheriff, constable or jailor, or person employed as a guard, who fraudulently contrives, procures, aids, connives at or voluntarily permits the escape of any prisoner in custody, is punishable by imprisonment in the penitentiary not exceeding three years, and by fine not exceeding one thousand dollars.

§ 4414. (1879) Every person who wilfully assists any prisoner confined in any prison, or in the lawful custody of any officer or person to escape, or in an attempt to escape from such prison or custody, is punishable as provided in the preceding section.

§ 4415. (1880) Every person who carries or sends into a prison anything useful to aid a prisoner in making his escape, with intent thereby to facilitate the escape of any prisoner confined therein, is punishable as provided in section forty-eight. (1)

(1) Sec. 48, here referred to, is the preceding § 4413.

CHAPTER IV.

FORGING, STEALING, MUTILATING AND FALSIFYING JUDICIAL AND PUBLIC
RECORDS AND DOCUMENTS.

SECTION.

4416 Larceny, destruction, etc., of
records by officers having them
in custody.

SECTION.

4417 Larceny, destruction, etc., of
records by other persons.
4418 Offering false or forged instru-
ments to be filed of record.

Larceny, de-
struction, etc.,
of records by
officers hav-
ing them in
custody.

§ 4416. (1881) Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, wilfully destroying, mutilating, defacing, altering or falsifying, removing or secreting the whole or any part of such record, map, book, paper, or proceeding, or who permits any other person so to do, is guilty of felony.

Larceny, de-
struction, etc.,
of records by
other persons.

§ 4417. (1881) Every person not an officer such as is referred to in the preceding section, who is guilty of any of the acts specified in that section is punishable by imprisonment in the penitentiary not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding one hundred dollars or by both.

Offering false
or forged
instruments to
be filed of
record.

§ 4418. (1880) Every person who knowingly procures or offers any false or forged instrument, to be filed, registered or recorded in any public office within this Territory, which instrument, if genuine, might be filed, or registered, or recorded under any law of this Territory or of the United States, is guilty of felony.

CHAPTER V.

PERJURY AND SUBORNATION OF PERJURY.

SECTION.

4419 Perjury defined.
 4420 Oath defined.
 4421 Oath of office.
 4422 Irregularity in administering.
 4423 Incompetency of witness no defense.

SECTION.

4424 Witness' knowledge of materiality of his testimony not necessary.
 4425 Making deposition, etc., when deemed complete.
 4426 Punishment of perjury.
 4427 Subornation of perjury.

§ 4419. (1884) Every person who, having taken an oath Perjury defined. that he will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which such an oath may by law be administered wilfully and contrary to such oath, states as true any material matter which he knows to be false, is guilty of perjury.

§ 4420. (1885) The term "oath" as used in the last section, Oath defined. includes an affirmation, and every other mode authorized by law of attesting the truth of that which is stated.

§ 4421. (1886) So much of an oath of office as relates to Oath of office. the future performance of official duties is not such an oath as is intended by the two preceding sections.

§ 4422. (1887) It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular Irregularity in administering. manner.

§ 4423. (1888) It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition, or certificate of which falsehood is alleged. Incompetency of witness no defense. It is sufficient that he did give such testimony or make such deposition, or certificate.

§ 4424. (1889) It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding. Witness' knowledge of materiality of his testimony not necessary.

§ 4425. (1890) The making of a deposition or certificate is deemed to be complete, within the provisions of this Chapter, from the time when it is delivered by the accused to any Making depositions, etc., when deemed complete.

other person with the intent that it be uttered or published as true.

Punishment
of perjury.

§ 4426. ⁽¹⁸⁹⁶⁾ Perjury is punishable by imprisonment in the penitentiary not less than one nor more than ten years.

Subornation
of perjury.

§ 4427. ⁽¹⁸⁹⁶⁾ Every person who wilfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured.

CHAPTER VI.

FALSIFYING EVIDENCE.

SECTION.

4428 Offering false evidence.

4429 Preventing or dissuading witness from attending.

SECTION.

4430 Bribing witnesses.

4431 Taking or offering to take bribes

Offering false
evidence.

§ 4428. ⁽¹⁸⁹⁶⁾ Every person who upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or antedated, is guilty of felony.

Preventing or
dissuading
witness from
attending.

§ 4429. ⁽¹⁸⁹⁶⁾ Every person who wilfully prevents or dissuades any person who is or may become a witness, from attending upon any trial, proceeding, or inquiry authorized by law, is guilty of a misdemeanor.

Bribing wit-
ness.

§ 4430. ⁽¹⁸⁹⁶⁾ Every person who gives or offers, or promises to give, to any witness, or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false, or to withhold true, testimony, is guilty of a misdemeanor.

Taking or
offering to
take bribes.

4431. ⁽¹⁸⁹⁶⁾ Every person who is a witness, or is about to be called as such, who receives or offers to receive any bribe, upon any understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial or proceeding upon which his testimony is required, is guilty of a misdemeanor.

CHAPTER VII.

OTHER OFFENCES AGAINST PUBLIC JUSTICE.

SECTION.

- 4432 Officers refusing to receive or arrest parties charged with crime.
- 4433 Delaying to take person arrested before magistrate.
- 4434 Making arrest, etc., without lawful authority.
- 4435 Inhumanity to prisoners.
- 4436 Resisting public officers in the discharge of their duties.
- 4437 Assaults, etc., by officers under color of authority.
- 4438 Refusing to aid officers in arrest, etc.
- 4439 Compounding crimes.
- 4440 Debtor fraudulently concealing his property.

SECTION.

- 4441 Defendant fraudulently concealing his property.
- 4442 Common barratry defined, how punished.
- 4443 What proof is required.
- 4444 Grand juror acting after challenge has been allowed.
- 4445 Disclosing fact of indictment or presentment having been found or made.
- 4446 Grand juror disclosing what transpired before the grand jury.
- 4447 Omission of duty by public officer.
- 4448 Commission of prohibited acts when no penalty is prescribed.

§ 4432. (1897) Every sheriff, coroner, keeper of a jail, constable, or other peace officer, who wilfully refuses to receive or arrest any person charged with a criminal offence, is punishable by fine not exceeding one thousand dollars, and imprisonment in the county jail not exceeding one year.

§ 4433. (1898) Every public officer or other person, having arrested any person upon a criminal charge, who wilfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor.

§ 4434. (1899) Every public officer, or person pretending to be a public officer, who under the pretense or color of any process or other legal authority, arrests any person or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements, without a regular process or other lawful authority therefor, is guilty of a misdemeanor.

§ 4435. (1900) Every officer who is guilty of wilful inhumanity or oppression toward any prisoner under his care or in his custody, is punishable by fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year.

Resisting public officers in the discharge of their duties.

§ 4436. (1901) Every person who wilfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both.

Assault, etc., by officers under color of authority.

§ 4437. (1902) Every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year.

Refusing to aid officers in arrest, etc.

§ 4438. (1902) Every male person above eighteen years of age who neglects or refuses to join the *posse comitatus* or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person against whom there may be issued any process, or by neglecting to aid and assist in retaking any person who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offence, being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, judge, or justice of the peace, or other officer concerned in the administration of justice, is punishable by fine of not exceeding one hundred dollars.

Compounding crimes.

§ 4439. (1904) Every person who, having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement or promise thereof, upon any agreement or understanding to compound or conceal such crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, except in the cases provided for by law, in which crimes may be compromised by leave [of] court, is punishable as follows:

1. By imprisonment in the penitentiary not exceeding five years, or in a county jail not exceeding one year, where the crime was punishable by death or imprisonment in the penitentiary for life.

2. By imprisonment in the penitentiary not exceeding three years, or in the county jail not exceeding six months, where the crime was punishable by imprisonment in the penitentiary for any other term than for life.

3. By imprisonment in the county jail not exceeding

six months, or by fine not exceeding one hundred dollars where the crime was a misdemeanor.

§ 4440. (1905) Every debtor who fraudulently removes debtor fraudulently removing his property his property or effects out of this Territory, or fraudulently sells, conveys, assigns or conceals his property with intent to defraud, hinder or delay his creditors of their rights, claims or demands, is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars*, or by both.

§ 4441. (1906) Every person against whom an action is Defendant intentionally concealing his property. pending, or against whom a judgment has been rendered for the recovery of any personal property, who fraudulently conceals, sells or disposes of such property, with intent to hinder, delay or defraud the person bringing such action or receiving such judgment, or with such intent removes such property beyond the limits of the county in which it may be at the time of the commencement of such action or the rendering of such judgment, is punishable as provided in the preceding section.

§ 4442. (1907) Common barratry is the practice of ex- Common barratry defined, how punished. As amended February 18, 1887. citing groundless judicial proceedings, and is punishable by imprisonment in the county jail not exceeding six months, or by a fine in any sum less than three hundred dollars, or by both.

§ 4443. (1908) No person can be convicted of common What proof is required. barratry except upon proof that he has excited suits or proceedings at law in at least three instances, and with a corrupt and malicious intent to vex and annoy.

§ 4444. (1909) Every grand juror who, with knowledge Grand juror acting after challenge has been allowed. that a challenge interposed against him by a defendant has been allowed, is present at or takes part or attempts to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

§ 4445. (1910) Every grand juror, district attorney, clerk, judge or other officer, who, except by issuing or in executing a warrant of arrest, wilfully discloses the fact of a presentment of an indictment having been made for a felony, until the defendant has been arrested, is guilty of a misdemeanor.

§ 4446. (1911) Every grand juror who, except when required by a court, wilfully discloses any evidence adduced before the grand jury, or anything which he himself or any

Grand juror disclosing what transpired before the grand jury.

Omission of duty by public officers.

other member of the grand jury may have said, or in what manner he or any other grand juror may have voted on a matter before them, is guilty of a misdemeanor.

§ 4447. ⁽¹⁹¹²⁾ Every wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

Commission of prohibited act which no penalty prescribed.

§ 4448. ⁽¹⁹¹³⁾ When the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed in any statute, the doing of such act is a misdemeanor.

CHAPTER VIII.

CONSPIRACY.

SECTION.

4449 Criminal conspiracy defined and punishment fixed.

SECTION.

4450 No other conspiracies punishable criminally.

4451 Overt act, when necessary.

Criminal conspiracy defined and punishment fixed.

§ 4449. ⁽¹⁹¹⁴⁾ If two or more persons conspire:

1. To commit any crime; or,
2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime; or,
3. Falsely to move or maintain any suit, action or proceeding; or,
4. To cheat and defraud any person of any property by any means which are in themselves criminal, or by any means which, if executed, would amount to a cheat, or to obtaining money or property by false pretenses; or,
5. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws:

They are punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars.

§ 1450. ⁽¹⁴⁵⁰⁾ No conspiracies, other than those enumerated in the preceding section are punishable criminally. No other conspiracies punishable criminally.

§ 1451. ⁽¹⁴⁵¹⁾ No agreement, except to commit a felony upon the person of another, or to commit arson, or burglary, amounts to a conspiracy, unless some act, besides such agreement, be done to effect the object thereof, by one or more of the parties to such agreement. overt act, when necessary

TITLE VIII. *

OF CRIMES AGAINST THE PERSON.

- CHAPTER I. Homicide.
 CHAPTER II. Mayhem.
 CHAPTER III. Kidnapping.
 CHAPTER IV. Robbery.
 CHAPTER V. Attempts to kill.
 CHAPTER VI. Assaults with intent to commit felony, other than assaults with intent to murder.
 CHAPTER VII. Duels and challenges.
 CHAPTER VIII. False imprisonment.
 CHAPTER IX. Assault and battery.
 CHAPTER X. Libel.

CHAPTER I.

HOMICIDE.

SECTION.	SECTION.
4452 Murder defined.	4459 Excusable homicide.
4453 Malice defined.	4460 Justifiable homicide by public officers.
4454 Degrees of murder.	4461 Justifiable homicide by other persons.
4455 Punishment of murder.	4462 Bare fear not to justify killing.
4456 Manslaughter defined, voluntary and involuntary manslaughter.	4463 Justifiable and excusable homicide not punishable.
4457 Punishment of manslaughter.	
4458 Deceased must die within a year and a day.	

Murder defined.

§ 4452. (1917) Murder is the unlawful killing of a human being with malice aforethought.

Malice defined.

§ 4453. (1918) Such malice may be expressed or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned or malignant heart.

(*) These titles are not numbered consecutively on the enrolled bill.

§ 4454. ⁽¹⁸⁴⁹⁾ Every murder perpetrated by poison, lying in wait, or any other kind of wilful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, rape, burglary, or robbery, or perpetrated from a premeditated design, unlawfully and maliciously, to effect the death of any other human being, other than him who is killed; or perpetrated by any act greatly dangerous to the lives of others, and evidencing a depraved mind, regardless of human life, is murder in the first degree: and any other homicide committed under such circumstances as would have constituted murder at common law, is murder in the second degree. Degrees of murder.

§ 4455. ⁽¹⁹²⁶⁾ Every person guilty of murder in the first degree shall suffer death, or, upon the recommendation of the jury, may be imprisoned, at hard labor in the penitentiary for life, at the discretion of the court, and every person guilty of murder in the second degree shall be imprisoned at hard labor in the penitentiary for not less than five, nor more than fifteen years. Punishment of murder.

§ 4456. ⁽¹⁹²¹⁾ Manslaughter is the unlawful killing of a human being, without malice. It is of two kinds: Manslaughter defined.

1. Voluntary, upon a sudden quarrel or heat of passion.
2. Involuntary, in the commission of an unlawful act, not amounting to felony: or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. Voluntary and involuntary manslaughter.

§ 4457. ⁽¹⁹²²⁾ Voluntary manslaughter is punishable by imprisonment in the penitentiary not exceeding five years; involuntary manslaughter is punishable by imprisonment in the county jail not exceeding one year. Punishment of manslaughter.

§ 4458. ⁽¹⁹²⁵⁾ To make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered: in the computation of which the whole of the day on which the act was done shall be reckoned the first. Deceased must die within a year and a day.

§ 4459. ⁽¹⁹²⁴⁾ Homicide is excusable in the following cases: Excusable homicide.

1. When committed by accident and misfortune, in doing any lawful act by lawful means, with usual and ordinary caution and without any unlawful intent. •

2. When committed by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation,

or upon a sudden combat, when no undue advantage is taken, nor any dangerous weapon used, and when the killing is not done in a cruel or unusual manner.

Justifiable
homicide by
public officers.

§ 4460. ¹⁸⁷² Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either:

1. In obedience to any judgment of a competent court; or,

2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,

3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

Justifiable
homicide by
other persons.

§ 4461. ¹⁸⁷² Homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,

2. When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,

3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished: but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mortal combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed: or in a sudden heat of passion caused by the attempt of any such offender to commit a rape upon his wife, daughter, sister, mother or other female relation or dependent, or to defile the same, or when the defilement has actually been committed; or,

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

§ 4462. ⁽¹⁹²⁵⁾ A bare fear of the commission of any of the offences mentioned in subdivisions two and three of the preceding section, to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted wholly under the influence of such fears. Bare fear not to justify kill-
ing.

§ 4463. ⁽¹⁹²⁸⁾ The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged. Justifiable
and excusable
homicide not
punishable.

CHAPTER II.

MAYHEM.

SECTION.

4464 Mayhem defined.

SECTION.

4465 Mayhem, how punishable.

§ 4464. ⁽¹⁹²⁹⁾ Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, or renders it useless, or who cuts out or disables the tongue, puts out an eye, slits the nose, ear, or lip, is guilty of mayhem. Mayhem
defined.

§ 4465. ⁽¹⁹³⁰⁾ Mayhem is punishable by imprisonment in the penitentiary not exceeding ten years. Mayhem how
punishable.

CHAPTER III.

KIDNAPPING.

SECTION.

4466 Kidnapping defined.

SECTION.

4467 Punishment of kidnapping.

Kidnapping
defined.

§ 4466. ¹⁸⁶¹ Every person who forcibly steals, takes, or arrests any person in this Territory, and carries him into another country, State, or county, or who forcibly takes or arrests any person, with a design to take him out of this Territory without having established a claim according to the laws of the United States, or of this Territory, or who hires, persuades, entices, decoys or seduces by false promises, misrepresentations, or the like, any person to go out of this Territory, or to be taken or removed therefrom, for the purpose and with the intent to sell such person into slavery or involuntary servitude, or otherwise to employ him for his own use, or to the use of another, without the free will and consent of such persuaded person, is guilty of kidnapping.

Punishment
of kidnapping.

§ 4467. ¹⁸⁶² Kidnapping is punishable by imprisonment in the penitentiary, not less than one nor more than ten years.

CHAPTER IV.

ROBBERY.

SECTION.

4468 Robbery defined.

SECTION.

4469 Punishment of robbery.

Robbery de-
fined.

§ 4468. ⁽¹⁸⁶⁴⁾ Robbery is the felonious taking of personal property in the possession of another, from his person,

or immediate presence, and against his will, accomplished by means of force or fear.

§ 4469. ⁽¹⁹³⁴⁾ Robbery is punishable by imprisonment in the penitentiary, not less than one year nor more than ten years. Punishment of robbery.

CHAPTER V.

ATTEMPTS TO KILL.

SECTION.

4470 Administering poison; punishment for.

SECTION.

4471 Assault with intent to commit murder.

§ 4470. ⁽¹⁹³⁵⁾ Every person who, with intent to kill, administers, or causes or procures to be administered to another any poison or other noxious or destructive substance or liquid, but by which death is not caused, is punishable by imprisonment in the penitentiary, not less than five years. Administering poison.
Punishment for.

§ 4471. ⁽¹⁹³⁶⁾ Every person who assaults another with intent to commit murder, is punishable by imprisonment in the penitentiary, not less than one nor more than ten years. Assault with intent to commit murder.

CHAPTER VI.

ASSAULTS WITH INTENT TO COMMIT FELONY, OTHER THAN ASSAULTS WITH INTENT TO MURDER.

SECTION.

4472 Assault with intent to commit rape, etc.

SECTION.

4473 Other assaults.
4474 Administering stupefying drugs.

§ 4472. ⁽¹⁹³⁷⁾ Every person who assaults another with intent to commit rape, the infamous crime against nature, Assault with intent to commit rape, etc.

mayhem or robbery, is punishable by imprisonment in the penitentiary not less than one nor more than ten years.

Other assaults.

§ 4473. ⁽¹⁹⁰⁸⁾ Every person who is guilty of an assault, with intent to commit any felony, except an assault with intent to commit murder, the punishment for which assault is not prescribed by the preceding section, is punishable by imprisonment in the penitentiary not exceeding five years, or in a county jail not exceeding one year, or by fine not exceeding three hundred dollars, or by both.

Administering stupefying drugs

§ 4474. ⁽¹⁹⁰⁹⁾ Every person guilty of administering to another any chloroform, ether, laudanum or other narcotic, anaesthetic or intoxicating agent, with intent thereby to enable or assist himself or any other person to commit a felony, is guilty of felony.

CHAPTER VII.

DUELS AND CHALLENGES.

SECTION.

4475 Duel defined.

4476 Punishment for fighting a duel, when death ensues.

4477 Punishment for fighting a duel although death does not ensue.

SECTION.

4478 Punishment for sending or accepting challenge to fight a duel and for posting for not fighting, etc.

4479 Duties of officers to prevent duels.

4480 Witness' privilege.

Duel defined.

§ 4475. ⁽¹⁹⁰⁶⁾ A duel is any combat with deadly weapons fought between two or more persons, by previous agreement or upon a previous quarrel.

Punishment for fighting a duel when death ensues.

§ 4476. ⁽¹⁹⁴¹⁾ Every person guilty of fighting any duel, from which death ensues within a year and a day, is guilty of murder in the first degree.

Punishment for fighting a duel although death does not ensue

§ 4477. ⁽¹⁹⁴²⁾ Every person guilty of fighting any duel, although no death or wound ensues, is punishable by imprisonment in the penitentiary not exceeding one year.

§ 4478. ⁽¹⁹⁴³⁾ Every person guilty of sending or accepting a challenge to fight a duel, or who acts as a second therein, or who posts or publishes another for not fighting a duel, or

for not sending or accepting a challenge to fight a duel, or who uses any reproachful or contemptuous language, verbal, written or printed, to or censuring another for not sending or accepting a challenge to fight a duel, or with intent to provoke a duel, is guilty of a misdemeanor.

Punishment for sending or accepting challenge to fight a duel, and for posting for not fighting, etc.

§ 4479. (1944) Every judge, justice of the peace, sheriff, or other officer bound to preserve the public peace, who has knowledge of the intention on the part of any persons to fight a duel, and who does not exert his official authority to arrest the party and prevent the duel, is punishable by fine not exceeding five hundred dollars.

Duties of officers to prevent duels.

§ 4480. (1945) No person shall be excused from testifying or answering any question upon any investigation or trial for a violation of either of the provisions of this Chapter, upon the ground that his testimony might tend to convict him of a crime. But no evidence given upon any examination of a person so testifying shall be received against him in any criminal prosecution or proceeding.

Witness' privilege.

CHAPTER VIII.

FALSE IMPRISONMENT.

SECTION.

4481 False imprisonment defined.

SECTION.

4482 False imprisonment, how punished.

§ 4481. (1946) False imprisonment is the unlawful violation of the personal liberty of another.

False imprisonment defined.

§ 4482. (1947) False imprisonment is punishable by fine not exceeding three thousand dollars, or by imprisonment in the county jail not more than one year, or by both.

False imprisonment how punished.

CHAPTER IX.

ASSAULT AND BATTERY.

SECTION.

4483 Assault defined.

4484 Assault, how punished.

4485 Battery defined.

SECTION.

4486 Battery, how punished.

4487 Assault with caustic chemicals.

4488 Assault with deadly weapons.

Assault defined.

§ 4483. (1948) An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

Assault, how punished.
As amended February 18, 1878.

§ 4484. (1949) An assault is punishable by a fine in any sum less than three hundred dollars, or by imprisonment in the county jail not exceeding three months.

Battery defined.

• § 4485. (1950) A battery is any wilful and unlawful use of force or violence upon the person of another.

Battery, how punished.
As amended February 18, 1878.

§ 4486. (1951) A battery is punishable by a fine in any sum less than three hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both.

Assault with caustic chemicals.

§ 4487. (1952) Every person who wilfully and maliciously places or throws, or causes to be placed or thrown, upon the person of another, any vitriol, corrosive acid, or caustic chemical of any nature, with the intent to injure the flesh or disfigure the body of such person, is punishable by imprisonment in the penitentiary not less than one nor more than ten years.

Assault with deadly weapons.

§ 4488. (1953) Every person who, with intent to do bodily harm, and without just cause or excuse, or when no considerable provocation appears, or when the circumstances show an abandoned or malignant heart, commits an assault upon the person of another, with a deadly weapon, instrument, or other thing, is punishable by imprisonment in the penitentiary not exceeding two years, or by fine not exceeding one thousand dollars, or by both.

CHAPTER X.

LIBEL.

SECTION.

4489 Libel defined.

4490 Punishment of libel.

4491 Malice presumed.

4492 Truth may be given in evidence; jury to determine law and fact.

4493 Publication defined.

4494 Liability of authors, editors and publishers.

SECTION.

4495 Publishing a true report of public official proceedings privileged.

4496 Extent of privilege.

4497 Other privileged communications.

4498 Threatening to publish libel; offer to prevent publication, with intent to extort money.

§ 4489. (1954) A libel is a malicious defamation, expressed either by printing or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural defects of one who is alive, and thereby to expose him to public hatred, contempt, or ridicule.

§ 4490. (1965) Every person who wilfully, and with a malicious intent to injure another, publishes or procures to be published any libel, is punishable by fine not exceeding one thousand dollars, or imprisonment in the county jail not exceeding one year.

§ 4491. (1956) An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

§ 4492. (1957) In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it appears to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends; the party shall be acquitted. The jury have the right to determine the law and the fact.

§ 4493. (1958) To sustain a charge of publishing a libel, it is enough that the accused knowingly parted with the immediate custody of the libel under circumstances which exposed it to be read or seen by any other person than himself.

§ 4494. (1959) Each author, editor, and proprietor of

Liability of authors, editors and publishers.

any newspaper, or serial publication, is chargeable with the publication of any words contained in any part of such book or number of such newspaper or serial.

Publishing a true report of public official proceeding privileged.

§ 4495. ⁽¹⁸⁹⁰⁾ No reporter, editor, or proprietor of any newspaper is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which shall not be implied from the mere fact of publication.

Extent of privilege.

§ 4496. ⁽¹⁸⁹¹⁾ Libelous remarks or comments connected with matter privileged by the last section receive no privilege by reason of their being so connected.

Other privileged communications.

§ 4497. ⁽¹⁸⁹²⁾ A communication made to a person interested in the communication, by one who was also interested or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious, and is a privileged communication.

Threatening to publish a libel; offer to prevent publication, with intent to extort money.

§ 4498. ⁽¹⁸⁹³⁾ Every person who threatens another to publish a libel concerning him, or any parent, husband, wife, or child of such person, or member of his family, and every person who offers to prevent the publication of any libel upon another person, with intent to extort any money or other valuable consideration from any person, is guilty of a misdemeanor.

TITLE IX.

OF CRIMES AGAINST THE PERSON AND AGAINST PUBLIC DECENCY
AND GOOD MORALS.

- CHAPTER I. Rape, abduction, carnal abuse of children, and seduction.
- CHAPTER II. Abandonment and neglect of children.
- CHAPTER III. Abortions.
- CHAPTER IV. Child stealing.
- CHAPTER V. The crime against nature.
- CHAPTER VI. Violating sepulchres and the remains of the dead.
- CHAPTER VII. Of crimes and offences against good morals.
- CHAPTER VIII. Indecent exposure, obscene exhibition; books and prints, and bawdy and other disorderly houses.
- CHAPTER IX. Lotteries.
- CHAPTER X. Gaming.
- CHAPTER XI. Other injuries to persons.

CHAPTER I.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION.

SECTION.	SECTION.
4499 Rape defined.	4503 Abduction for purposes of prostitution.
4500 When physical ability must be proved.	4504 Abduction of female under age of eighteen for prostitution.
4501 Penetration sufficient.	
4502 Punishment of rape.	

§ 4499. ⁽¹⁸⁶⁴⁾ Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, under either of the following circumstances:

1. When the female is under the age of thirteen years.

2. Where she is incapable, through lunacy or any other unsoundness of mind, whether temporary or permanent, of giving legal consent.

3. Where she resists but her resistance is overcome by force or violence.

Rape defined.

Jan. 26, 1888.

4. Where she is prevented from resisting by threats of immediate and great bodily harm, accompanied by apparent power of execution; or by any intoxicating, narcotic, or anæsthetic substance administered by or with the privity of the accused.

5. Where she is at the time unconscious of the nature of the act, and this is known to the accused.

6. Where she submits under the belief that the person committing the act is her husband and this belief is indeed induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce such belief.

When a person
can establish
that he
was forced.

§ 4500. ⁽¹⁸⁹⁰⁾ No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, and beyond a reasonable doubt.

Penetration
sufficient.

§ 4501. ⁽¹⁸⁹⁰⁾ The essential guilt of rape consists in the outrage to the person and feelings of the female; any sexual penetration, however slight, is sufficient to complete the crime.

Punishment
for rape.

§ 4502. ⁽¹⁸⁹⁰⁾ Rape is punishable by imprisonment in the penitentiary not less than five years.

Abduction for
purposes of
prostitution.

§ 4503. ⁽¹⁸⁹⁰⁾ Every person who inveigles or entices any female of previous chaste character, into any house of ill-fame, or of assignation, or elsewhere, for the purpose of prostitution; and every person who aids or assists in such abduction for such purposes; is punishable by imprisonment in the penitentiary not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Abduction of
female under
age of eight-
een for pros-
titution.

§ 4504. ⁽¹⁸⁹⁰⁾ Every person who takes away any female under the age of eighteen years from her father, mother, guardian, or other person having the legal charge of her person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the penitentiary not exceeding five years, and a fine not exceeding one thousand dollars.

CHAPTER II.

ABANDONMENT AND NEGLECT OF CHILDREN.

SECTION.

4505 Omitting to provide child with necessities.

SECTION.

4506 Deserting child.

§ 4505. ⁽¹⁹⁷⁰⁾ Every parent or guardian of any child who wilfully omits, without lawful excuse, to perform any duty imposed upon him by law, to furnish necessary food, clothing, shelter or attention for such child is guilty of a misdemeanor.

§ 4506. ⁽¹⁹⁷¹⁾ Every parent of any child under the age of six years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the penitentiary not exceeding five years, or in a county jail not exceeding six months.

CHAPTER III.

ABORTIONS.

SECTION.

4507 Administering drugs, etc., with intent to produce miscarriage.

§ 4507. ⁽¹⁹⁷²⁾ Every person who provides, supplies or administers to any pregnant woman, or procures any such woman to take any medicine, drug or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the penitentiary not less than two nor more than ten years.

CHAPTER IV.

CHILD STEALING.

SECTION.

4508 Definition and punishment of
child stealing.

Definition and
punishment
of child steal-
ing.

§ 4508. ⁽¹⁹⁶⁶⁾ Every person who maliciously, forcibly or fraudulently takes or entices away any child under the age of twelve years, with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child, is punishable by imprisonment in the penitentiary not exceeding ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars.

CHAPTER V.

THE CRIME AGAINST NATURE.

SECTION.

4509 Crime against nature.

Crime against
nature.

§ 4509. ⁽¹⁹⁷⁴⁾ Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the penitentiary not more than five years.

SECTION.

4510 Penetration sufficient to com-
plete the crime.

Penetration
sufficient to
complete the
crime.

§ 4510. ⁽¹⁹⁷⁵⁾ Any sexual penetration, however slight, is sufficient to complete the crime against nature.

CHAPTER VI.

VIOLATING SEPULTURES AND THE REMAINS OF THE DEAD.

SECTION.

4511 Unlawful mutilation or removal of dead bodies; not to apply to certain persons.

SECTION.

4512 Unlawful removal of dead body from grave for dissection, etc.
4513 Defacing tombs and monuments.

§ 4511. ⁽¹⁹⁷⁶⁾ Every person who mutilates, disinters or removes from the place of sepulture the dead body of a human being without authority of law, is guilty of felony. But the provisions of this section do not apply to any person who removes the dead body of a relative or friend for re-interment.

§ 4512. ⁽¹⁹⁷⁷⁾ Every person who removes any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same or to dissect it, without authority of law, or from malice or wantonness, is punishable by imprisonment in the penitentiary not exceeding five years.

§ 4513. ⁽¹⁹⁷⁸⁾ Every person who wilfully and maliciously defaces, breaks, destroys, or removes any tomb, monument, or gravestone, erected to any deceased person, or any memento or memorial, or any ornamental plant, tree, or shrub, appertaining to the place of burial of a human being, or who shall mark, deface, injure, destroy, or remove any fence, post, rail, or wall of any cemetery or graveyard, is guilty of a misdemeanor.

CHAPTER VII.

OF CRIMES AND OFFENCES AGAINST GOOD MORALS.

SECTION.	SECTION.
4514 Barbarous and noisy amusements, and theatres where liquors are sold, prohibited on Sunday.	4521 When Sunday commences and ends.
4515 Keeping open places of business on Sunday.	4522 Selling liquors at camp or field meeting.
4516 Limitation in operation of preceding section.	4523 Limitation of preceding section.
4517 Disturbing religious meetings.	4524 Procuring female to play on musical instrument in public. Female playing musical instrument in public.
4518 Sale of liquors at theatres and employing women to sell liquors thereat.	4525 Procuring female to exhibit herself for hire. Female exhibiting herself for hire.
4519 Performing unnecessary labor on Sunday.	4526 Furnishing intoxicating drink to persons under sixteen years of age. <i>Proviso</i> as to parents, guardians and physicians.
4520 Preceding section does not apply to certain kinds of labor.	

Barbarous and noisy amusements and theatres where liquors are sold prohibited on Sunday.

§ 4514. (1979) Every person who, on Sunday, gets up, exhibits, opens, or maintains, or aids in getting up, exhibiting, opening, or maintaining any bull, bear, cock, or prize fight, horse race, circus, gambling house, or saloon, or any barbarous and noisy amusement, or who keeps, conducts, or exhibits any theatre, melodeon, dance, cellar, or other place of musical, theatrical, or operatic performance, spectacle, or representation where any wines, liquors, or intoxicating drinks are bought, sold, used, drank, or given away, or who purchases any ticket of admission, or directly or indirectly pays any admission fee to or for the purpose of witnessing or attending any such place, amusement, spectacle, performance, or representation, is guilty of a misdemeanor.

Keeping open places of business on Sunday

§ 4515. (1980) Every person who keeps open on Sunday any store, workshop, bar, saloon, banking house, or other place of business, for the purpose of transacting business therein, is punishable by fine not less than five nor more than one hundred dollars.

Limitation in operation of preceding section.

§ 4516. (1981) The provisions of the preceding section do not apply to persons who, on Sunday, keep open hotels, boarding houses, baths, restaurants, taverns, livery stables,

or retail drug stores for the legitimate business of each, or such manufacturing establishments as are usually kept in continued operation.

§ 4517. (1982) Every person who wilfully disturbs or disquiets any assemblage of people, met for religious worship, by noise, profane discourse, rude, or indecent behavior, or by any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor. Disturbing religious meeting.

§ 4518. (1983) Every person who sells or furnishes any malt, vinous, or spirituous liquors to any person in the auditorium or lobbies of any theatre, melodeon, museum, circus, or caravan, or place where any farce, comedy, tragedy, ballet, opera, or play is being performed, or any exhibition of dancing, juggling, wax-work figures and the like is being given for public amusement, and every person who employs or procures, or causes to be employed or procured, any person to sell or furnish any malt, vinous, or spirituous liquors at such place, is guilty of a misdemeanor. Sale of liquors at theatres and on playing women to sell thereat.

§ 4519. (1984) Every person who performs any unnecessary labor, or does any unnecessary business on Sunday, is guilty of a misdemeanor, and shall be fined in any sum not exceeding twenty-five dollars. Performing unnecessary labor on Sunday.

§ 4520. (1985) Labor employed by employes of such works as are usually kept in constant operation, and in irrigating, is not included in the foregoing section. Preceding section does not apply to certain kinds of labor.

§ 4521. (1986) For the purposes of this act, Sunday shall commence at midnight Saturday, and terminate the following midnight. When Sunday commences and ends.

§ 4522. (1987) Every person who erects or keeps a booth, tent, stall, or other contrivance for the purpose of selling or otherwise disposing of any wine, or spirituous, or intoxicating liquors, or any drink of which wines, spirituous or intoxicating liquors form a part, or for selling or otherwise disposing of any article of merchandise, or who peddles, or hawks about any such drink or article, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, is punishable by fine of not less than five nor more than five hundred dollars. Selling liquors at camp or field meetings.

§ 4523. (1988) The provisions of the preceding section do not apply to any person carrying on a regular business in Limitation of preceding section.

the sale of liquors or other articles, which business was established prior to the appointment of the meeting referred to in such section.

Procuring females to play on musical instruments in public.
As amended February 18, 1878.

§ 4524. (1868) Every person who causes, procures or employs any female to play for hire, drink or gain upon any musical instrument in any drinking saloon, dance room or dance cellar, public garden, or any public highway, common or street, or on a vessel, steamboat or railroad car, or in any lewd house, or disorderly place whatsoever, where two or more persons are assembled together, is punishable by fine in any sum less than three hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both; and any female so playing upon any musical instrument whatsoever, is punishable by fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding one month, or by both.

Female play ing musical instruments in public

Procuring female to exhibit herself for hire.
As amended February 18, 1887.

§ 4525. (1868) Every person who causes or procures or employs any female to dance, promenade or otherwise exhibit herself for hire, drink or gain, in any drinking saloon, dance cellar or dance room, public garden, public highway or in any place whatsoever (theatres excepted), where two or more persons are assembled together, is punishable by a fine in any sum less than three hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both; and every female so dancing, promenading or exhibiting herself, is punishable by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding one month, or by both.

Female exhibiting herself for hire

Furnishing intoxicating drink to persons under sixteen years of age.

§ 4526. (1891) Every person who sells or gives to another under the age of sixteen years, to be by him drank at the time as a beverage, any intoxicating drink, is guilty of a misdemeanor and punishable by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months; *Provided*, That nothing in this section shall be deemed to apply to parents of such children, or guardians of their wards, or physicians.

Provido as to parents, guardians and physicians.

CHAPTER VIII.

INDECENT EXPOSURE, OBSCENE EXHIBITIONS, BOOKS AND PRINTS, AND BAWDY AND OTHER DISORDERLY HOUSES.

SECTION.	SECTION.
4527 Indecent exposures, exhibitions and pictures.	4530 Their destruction.
4528 Seizure of indecent articles authorized.	4531 Keeping or residing in a house of ill-fame.
4529 Their character to be summarily determined.	4532 Keeping disorderly houses.

§ 4527. ⁽¹⁸⁹²⁾ Every person who wilfully and lewdly, ^{Indecent exposure, exhibitions and pictures.} either :

1. Exposes his person or the private parts thereof in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

2. Procures, counsels or assists any person so to expose himself, or to take part in any model artist exhibition, or to make any other exhibition of himself to public view, or to the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts; or,

3. Writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale or exhibits any obscene or indecent writing, paper or book; or designs, copies, draws, engraves, paints or otherwise prepares any obscene or indecent picture or print; or moulds, cuts, casts or otherwise makes any obscene or indecent figure; or,

4. Writes, composes or publishes any notice or advertisement of any such writing, paper, book, picture, print or figure; or any notice or advertisement for producing or facilitating a miscarriage; or,

5. Sings any lewd or obscene song, ballad or other words in any public place, or in any place where there are persons present to be annoyed thereby;

Is guilty of a misdemeanor.

§ 4528. ⁽¹⁸⁹⁸⁾ Every person who is authorized or enjoined to arrest any person for a violation of subdivision three

Seizure of indecent articles authorized.

of the last section, is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print, or figure found in possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

Their character to be summarily determined.

§ 4529. ⁽¹⁸⁹⁶⁾ The magistrate to whom any obscene or indecent writing, paper, book, picture, print, or figure is delivered, pursuant to the foregoing section, must, upon the examination of the accused, or, if the examination is delayed or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture, print, or figure, and if he finds it to be obscene or indecent, he must deliver one copy to the prosecuting attorney of the county in which the accused is liable to complaint or trial, and must at once destroy all the other copies.

Their destruction.

§ 4530. ⁽¹⁸⁹⁶⁾ Upon the conviction of the accused, such attorney must cause any writing, paper, book, picture, print, or figure, in respect whereof the accused stands convicted, and which remains in the possession or under the control of such attorney, to be destroyed.

Keeping or residing in a house of ill-fame.

§ 4531. ⁽¹⁸⁹⁶⁾ Every person who keeps a house of ill-fame in this Territory, resorted to for the purpose of prostitution or lewdness, or who wilfully resides in such house, or resorts thereto for lewdness, is guilty of a misdemeanor.

Keeping disorderly houses.

§ 4532. ⁽¹⁸⁹⁷⁾ Every person who keeps any disorderly house or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner, is guilty of a misdemeanor.

CHAPTER IX.

LOTTERIES.

SECTION.

4533 Lottery defined.

4534 Punishment for drawing lottery.

4535 Punishment for selling lottery tickets.

4536 Aiding lotteries.

4537 Lottery offices; advertising lottery offices.

SECTION.

4538 Insuring lottery tickets; publishing offers to insure.

4539 Property offered for disposal in lottery forfeited.

4540 Letting building for lottery purposes.

§ 4533. ⁽¹⁹⁹⁸⁾ A lottery is any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share, or any interest in such property, upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known. Lottery defined.

§ 4534. ⁽¹⁹⁹⁸⁾ Every person who contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a misdemeanor. Punishment for drawing lottery.

§ 4535. ⁽²⁰⁰⁰⁾ Every person who sells, gives, or in any manner whatever, furnishes or transfers to or for any other person any ticket, chance, share or interest, or any paper, certificate, or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in, or depending upon the event of any lottery, is guilty of a misdemeanor. Punishment for selling lottery tickets.

§ 4536. ⁽²⁰⁰¹⁾ Every person who aids or assists, either by printing, writing, advertising, publishing, or otherwise in setting up, managing, or drawing any lottery, or in selling or disposing of any ticket, chance, or share therein is guilty of a misdemeanor. Aiding lotteries.

§ 4537. ⁽²⁰⁰²⁾ Every person who opens, sets up, or keeps, by himself or by any other person, any office or other place for the sale of, or for registering the number of any Lottery offices.

Advertising
lottery offices.

ticket in any lottery, or who, by printing, writing, or otherwise, advertises or publishes the setting up, opening, or using of any such office is guilty of a misdemeanor.

Insuring
lottery tickets.
Publishing of
fers to insure

§ 4538. (2005) Every person who insures or receives any consideration for insuring for or against the drawing of any ticket in any lottery whatever, whether drawn or to be drawn within the Territory or not, or who receives any valuable consideration upon any agreement to repay any sum, or deliver the same, or any other property, if any lottery ticket or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not be drawn, at any particular time or in any particular order, or who promises or agrees to pay any sum of money, or to deliver any goods, things in action, or property, or to forbear to do anything for the benefit of any person with or without consideration, upon any event or contingency dependent on the drawing of any ticket in any lottery, or who publishes any notice or proposal of any of the purposes aforesaid, is guilty of a misdemeanor.

Property of
fered for dis-
posal in lot-
tery forfeited.

§ 4539. (2005) All moneys and property offered for sale or distribution in violation of any of the provisions of this Chapter are forfeited to the Territory, and may be recovered by information filed, or by an action brought by the attorney-general, or by any district or county attorney, in the name of the Territory. Upon the filing of the information or complaint, the clerk of the court, or if the suit be in a justice's court, the justice must issue an attachment against the property mentioned in the complaint or information, which attachment has the same force and effect against such property, and is issued in the same manner as attachments issued from the respective courts in civil cases.

Letting build-
ing for lottery
purposes.

§ 4540. (2005) Every person who lets, or permits to be used, any building or vessel, or any portion thereof, knowing that it is to be used for setting up, managing, or drawing any lottery, or for the purpose of selling or disposing of lottery tickets, is guilty of a misdemeanor.

CHAPTER X.

GAMING.

SECTION.

4541 Gaming prohibited, penalty.
 4542 Permitting gambling in houses
 owned or rented.
 4543 Winning at play by fraudulent
 means.

SECTION.

4544 Witnesses neglecting or refusing
 to attend trial.
 4545 Witness' privilege.
 4546 Duties of prosecuting officer,
 sheriffs and others.

§ 4541. ⁽²⁰⁰⁶⁾ Every person who deals, plays or carries on, opens or causes to be opened, or who conducts, either as owner or employee; whether for hire or not, any game of faro monte, roulette, lansquenet, rouge et noire, rondo, or any game played with cards, dice, or any other device, for money, checks, credit or any other representative value, is guilty of a misdemeanor. Gaming prohibited.
Feb. 16, 1888.

§ 4542. ⁽²⁰⁰⁷⁾ Every person who knowingly permits any of the games mentioned in the preceding section to be played, conducted, or dealt in any house owned or rented by such person, in whole or in part, is punishable as provided in the preceding section. Permitting gambling in houses owned or rented.

§ 4543. ⁽²⁰⁰⁸⁾ Every person who, by any practice, cheat, or device, or false pretense whatsoever, while playing at any game of chance, or while bearing any share in wagers played for, or while betting on sides or hands of such play, wins or acquires to himself or another any sum of money or valuable thing, is guilty of a misdemeanor. Winning at play by fraudulent means.

§ 4544. ⁽²⁰⁰⁹⁾ Every person duly summoned as a witness for the prosecution, on any proceedings had under this Chapter, who neglects or refuses to attend, as required, is guilty of a misdemeanor. Witness neglecting or refusing to attend trial.

§ 4545. ⁽²⁰¹⁰⁾ No person otherwise competent as a witness, is disqualified from testifying as such concerning the offence of gaming, on the ground that such testimony may criminate himself; but no prosecution can afterwards be had against him for any offence concerning which he testified. Witness' privilege.

Duties of prosecuting attorney, sheriffs and others.

§ 4546. ⁽²⁰¹¹⁾ Every prosecuting attorney, sheriff, constable, or police officer, must inform against and diligently prosecute persons whom they have reasonable cause to believe offenders against the provisions of this Chapter, and every such officer refusing or neglecting so to do, is guilty of a misdemeanor.

CHAPTER XI.

OTHER INJURIES TO PERSONS

SECTION.	SECTION.
4547 Acts of intoxicated physician.	4557 Altering brands.
4548 Wilfully poisoning food, medicine, or water.	4558 Cruel treatment of idiots, lunatics, etc.
4549 Mismanagement of steamboats.	4559 Refusing to obey writ of habeas corpus.
4550 Mismanagement of steamboilers.	4560 Reconfining persons discharged upon writ of habeas corpus.
4551 Counterfeiting trade-mark.	4561 Concealing persons entitled to benefit of habeas corpus.
4552 Selling goods which bear counterfeited trade-mark.	4562 Inn keepers and carriers refusing to receive guests and passengers.
4553 Definition of the phrase "counterfeited trade-mark," etc.	4563 Selling debased quicksilver.
4554 "Trade-mark," defined.	
4555 Refilling casks, etc., bearing trade-mark.	
4556 Defacing marks upon logs, lumber or wood.	

Acts of intoxicated physician.

§ 4547. ⁽²⁰¹²⁾ Every physician who, in a state of intoxication, does any act as such physician to another person by which the life of such other person is endangered, is guilty of a misdemeanor.

Wilfully poisoning food, medicine or water.

§ 4548. ⁽²⁰¹³⁾ Every person who wilfully mingles any poison with any food, drink, or medicine, with intent that the same shall be taken by any human being, to his injury, and every person who wilfully poisons any spring, well, stream or reservoir of water, is punishable by imprisonment in the penitentiary for a term not less than one nor more than ten years.

Mismanagement of steamboats.

§ 4549. ⁽²⁰¹⁴⁾ Every captain, or other person having charge of any steamboat used for the conveyance of passengers, or of the boilers and engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, or

any apparatus or machinery connected therewith, by which bursting or breaking human life is endangered, is guilty of a misdemeanor.

§ 4550. ⁽²⁰¹⁵⁾ Every engineer or other person having charge of any steam boiler, steam engine, or other apparatus for generating or employing steam, used in any manufactory, railway or other mechanical works, who wilfully, or from ignorance, or gross neglect, creates or allows to be created such an undue quantity of steam as to burst or break the boiler, or engine, or apparatus, or cause any other accident whereby human life is endangered, is guilty of a misdemeanor.

§ 4551. ⁽²⁰¹⁶⁾ Every person who wilfully forges or counterfeits or procures to be forged or counterfeited, any trade-mark usually affixed by any person to his goods, with intent to pass off any goods to which such forged or counterfeited trade-mark is affixed or intended to be affixed, as the goods of such person, is guilty of a misdemeanor.

§ 4552. ⁽²⁰¹⁷⁾ Every person who sells, or keeps for sale any goods upon or to which any counterfeited trade-mark has been affixed, intending to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor.

§ 4553. ⁽²⁰¹⁸⁾ The phrases "forged trade-mark" and "counterfeited trade-mark," or their equivalents, as used in this Chapter, include every alteration or imitation of any trade-mark so resembling the original as to be likely to deceive.

§ 4554. ⁽²⁰¹⁹⁾ The phrase "trade-mark," as used in the three preceding sections, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded, or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description.

§ 4555. ⁽²⁰²⁰⁾ Every person who has or uses any cask, bottle, vessel, case, cover, label, or other thing bearing or having in any way connected with it the duly filed trade-mark or name of another, for the purpose of disposing with intent to deceive or defraud, of any article other than that which such cask, bottle, vessel, case, cover, label, or other thing

originally contained or was connected with by the owner of such trade-mark or name, is guilty of a misdemeanor.

Defacing
mark upon
logs, lumber
or wood.

§ 4556. (2021) Every person who cuts out, alters or defaces any mark made upon any log, lumber or wood, or puts a false mark thereon, with intent to prevent the owner from discovering its identity, is guilty of a misdemeanor.

Altering
brands.

§ 4557. (2022) Every person who marks or brands, alters or defaces the mark or brand of any horse, mare, gelding, colt, jack, jennet, mule, bull, ox, steer, cow, calf, sheep, goat, hog, shoat or pig belonging to another, with intent thereby to steal the same or to prevent identification thereof by the true owner, is punishable by imprisonment in the penitentiary for not less than one nor more than five years.

Cruel treat-
ment of idi-
ots, lunatics,
etc

§ 4558. (2023) Every person guilty of any unnecessarily harsh, cruel, or unkind treatment of, or any neglect of duty towards any idiot, lunatic or insane person, is guilty of a misdemeanor.

Refusing to
obey writ of
habeas corpus.

§ 4559. (2024) Every officer or person to whom a writ of habeas corpus may be directed who, after service thereof, neglects or refuses to obey the command thereof, is guilty of a misdemeanor.

Reconfining
persons dis-
charged upon
writ of habeas
corpus.

§ 4560. (2025) Every person who, either solely or as member of a court, knowingly and unlawfully re-commits, imprisons or restrains of his liberty, for the same cause, any person who has been discharged on a writ of habeas corpus, is guilty of a misdemeanor.

Concealing
persons en-
titled to bene-
fit of habeas
corpus.

§ 4561. (2026) Every person having in his custody, or under his restraint or power, any person for whose relief a writ of habeas corpus has been issued, who, with the intent to elude the service of such writ or to avoid the effect thereof, transfers such person to the custody of another or places him under the power or control of another, or conceals or changes the place of his confinement or restraint, or removes him without the jurisdiction of the court or judge issuing the writ, is guilty of a misdemeanor.

Inn keepers
and carriers
refusing to re-
ceive guests
and passen-
gers.

§ 4562. (2027) Every person and every agent or officer of any corporation carrying on business as an inn-keeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor.

Selling de-
based quick-
silver.

§ 4563. (2028) Every person who wilfully sells or offers for sale as pure, any debased or adulterated quicksilver, is guilty of a misdemeanor.

TITLE X.

OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

SECTION.	SECTION.
4564 Death from explosions, etc.	4577 Obstructing attempts to extinguish fires.
4565 Death from collision on railroad.	4578 Maintaining bridge or ferry without authority.
4566 Public nuisances defined.	4579 Engineer of locomotive engine omitting to ring bell when crossing highway.
4567 Unequal damage.	4580 Intoxication of engineers, conductors or drivers of locomotives or cars.
4568 Maintaining a nuisance, a misdemeanor.	4581 Placing passenger cars in front of freight cars.
4569 Establishing or keeping pest houses within cities or villages.	4582 Violation of duty by employees of railroad companies.
4570 Putting dead animals in streets, rivers, etc.	4583 Exposing persons infected with any contagious disease in a public place.
4571 Keeping gunpowder, etc., unlawfully.	4584 Frauds practised to effect the market price.
4572 Apothecary omitting to label drugs or labeling them wrongfully.	4585 Racing upon highways.
4573 Putting extraneous substances in packages of goods, usually sold by weight, with intent to increase weight.	4586 Selling liquors to Indians.
4574 Adulterating food, drugs, liquors, etc.	4587 Death from mischievous animals
4575 Disposing of tainted food, etc.	
4576 Setting woods on fire.	

§ 4564. ⁽²⁰²¹⁾ Every person having charge of any steam boiler or steam engine, or other apparatus for generating or employing steam, used in any manufactory or on any railroad, or in any vessel, or in any kind of mechanical work, who wilfully, or from ignorance or neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine or apparatus, or to cause any other accident whereby the death of a human being is produced, is punishable by imprisonment in the penitentiary for not less than one nor more than ten years. Death from explosions, etc.

§ 4565. ⁽²⁰³⁰⁾ Every conductor, engineer, brakeman, switchman or other person having charge, wholly or in part, of any railroad car, locomotive or train, who wilfully or negligently suffers or causes the same to collide with another car, locomotive or train, or with any other object or thing, whereby the death of a human being is produced, is punishable by imprisonment in the penitentiary for not less than one nor more than ten years. Death from collision on railroad.

Public nuisance defined.

§ 4566. ⁽²⁰⁵¹⁾ A public nuisance is a crime against the order and economy of the Territory, and consists in unlawfully doing any act, or omitting to perform any duty, which act or omission, either:

1. Annoys, injures or endangers the comfort, repose, health or safety of three or more persons; or,

2. Offends public decency; or,

3. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake, stream, canal, basin, or any public park, square, street or highway; or,

4. In any way renders three or more persons insecure in life, or the use of property.

Unequal damage.

§ 4567. ⁽²⁰⁵²⁾ An act which affects three or more persons, in either of the ways specified in the last section, is not less a nuisance because the extent of damage is unequal.

Maintaining a nuisance a misdemeanor.

§ 4568. ⁽²⁰⁵³⁾ Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who wilfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

Establishing or keeping pest house in cities or villages.

§ 4569. ⁽²⁰⁵⁴⁾ Every person who establishes or keeps, or causes to be established or kept, within the limits of any city or village, any pest house, hospital, or place for persons affected with contagious or infectious diseases, is guilty of a misdemeanor.

Putting dead animals in streets, rivers, etc.

§ 4570. ⁽²⁰⁵⁵⁾ Every person who puts the carcass of any dead animal, or the offal from any slaughter pen, corral or butcher shop into any river, creek, pond, street, alley, public highway or road in common use, or who attempts to destroy the same by fire, within one-fourth of a mile of any city or village, is guilty of a misdemeanor.

Keeping gunpowder, etc., unlawfully.

§ 4571. ⁽²⁰⁵⁶⁾ Every person who makes or keeps gunpowder, nitro-glycerine or other highly explosive substance within any city or village, or who carries the same through the streets thereof, in any quantity or manner such as is prohibited by law or by any ordinance of such city or village, is guilty of a misdemeanor.

Apothecary omitting to label drugs, or labeling them wrongfully.

§ 4572. ⁽²⁰⁵⁷⁾ Every apothecary, druggist, or person carrying on business as a dealer in drugs or medicines, or person employed as clerk or salesman, by such person, who in putting up any drugs or medicines, or making up any prescription, or filling any order for drugs or medicines, wilfully, negli-

gently, or ignorantly omits to label the same, or puts an untrue label, stamp, or other designation of contents, upon any box, bottle, or other package, containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor, or if death ensues, is guilty of a felony.

§ 4573. ⁽²⁰⁴⁸⁾ Every person who, in putting up any bag, bale, box, barrel, or other package, any hops, cotton, wool, grain, hay, or other goods usually sold in bags, bales, boxes, barrels, or packages by weight, puts in or conceals therein anything whatever, for the purpose of increasing the weight of such bag, bale, box, barrel, or package, is punishable by a fine of twenty-five dollars for each offence.

Putting extra-
neous sub-
stances in
packages of
goods usually
sold by weight
with intent to
increase
weight

§ 4574. ⁽²⁰⁵⁷⁾ Every person who adulterates or dilutes any article of food, drink, drug, medicine, spirituous or malt liquor, or wine, or any article useful in compounding them, with a fraudulent intent to offer the same or cause or permit it to be offered for sale as unadulterated or undiluted, and every person who fraudulently sells, or keeps or offers for sale the same, as unadulterated or undiluted, is guilty of a misdemeanor.

Adulterating
food, drugs,
liquors, etc.

§ 4575. ⁽²⁰⁴⁰⁾ Every person who knowingly sells, or keeps or offers for sale, or otherwise disposes of any article of food, drink, drug, or medicine, knowing that the same has become tainted, decayed, spoiled, or otherwise unwholesome or unfit to be eaten or drank, with intent to permit the same to be eaten or drank, is guilty of a misdemeanor.

Disposing of
tainted food,
etc.

§ 4576. ⁽²⁰⁴¹⁾ Every person who maliciously or negligently sets on fire, or causes or procures to be set on fire, any woods, prairies, grasses, or grain, on any lands, public or private, is guilty of a misdemeanor.

Setting woods
on fire.

§ 4577. ⁽²⁰⁴²⁾ Every person who, at the burning of a building disobeys the lawful orders of any public officer or fireman, or offers any resistance to or interference with the lawful efforts of any fireman or company of firemen to extinguish the same, or engages in any disorderly conduct calculated to prevent the same from being extinguished, or who

Obstructing
attempts to
extinguish
fire.

forbids, prevents, or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

Maintaining bridge or ferry without authority.

§ 4578. ⁽²⁰⁴³⁾ Every person who demands, or receives compensation for the use of any bridge or ferry, or sets up or keeps any road, bridge, ferry, or constructed ford, for the purpose of receiving any remuneration for the use of the same, without the authority of law, is guilty of a misdemeanor.

Engineer of locomotive engine omitting to ring bell when crossing highway.

§ 4579. ⁽²⁰⁴⁴⁾ Every person in charge of a locomotive engine who, before crossing any traveled street, road or highway, omits to cause a bell to ring or steam whistle to sound at the distance of at least eighty rods from the crossing, and up to it, is guilty of a misdemeanor.

Intoxication of engineers, conductors or drivers of locomotives or cars.

§ 4580. ⁽²⁰⁴⁵⁾ Every person who is intoxicated while in charge of a locomotive engine, or while acting as conductor, or driver upon any railroad train or car, whether propelled by steam or drawn by horses, or while acting as train dispatcher or as telegraph operator, receiving or transmitting dispatches in relation to the movement of trains, is guilty of a misdemeanor.

Placing passenger car in front of freight car.

§ 4581. ⁽²⁰⁴⁶⁾ Every person who, in making up or running railroad trains, places or runs, or causes to be placed or run, any freight car in the rear of passenger cars, is guilty of a misdemeanor, and if loss of life or limb results from such placing or running, is guilty of felony. The term "freight car" as used in this section does not include a baggage, express, or mail car.

Violation of duty by employees of railroad companies.

§ 4582. ⁽²⁰⁴⁷⁾ Every engineer, conductor, brakeman, switch tender, or other officer, agent, or servant of any railroad company who is guilty of any wilful violation or omission of his duty as such officer, agent, or servant whereby human life or safety is endangered, the punishment of which is not otherwise prescribed, is guilty of a misdemeanor.

Exposing person infected with any contagious disease in a public place.

§ 4583. ⁽²⁰⁴⁸⁾ Every person who wilfully exposes himself or another afflicted with any contagious or infectious disease, in any public place or thoroughfare, except in his necessary removal in a manner the least dangerous to the public health, is guilty of a misdemeanor.

Frauds practiced to affect the market price.

§ 4584. ⁽²⁰⁴⁹⁾ Every person who wilfully makes or publishes any false statement, spreads any false rumor, or employs any other false or fraudulent means or device, with in-

tent to affect the market price of any kind of property, is guilty of a misdemeanor.

§ 4585. s 220. Every person driving any conveyance ^{Racing upon highways.} drawn by horses or mules upon any public road, street or ^{March 8, 1888.} highway, public square or school ground, who wilfully causes or permits his horses or mules to run at sufficient speed to endanger human life or the destruction of property; or any person who causes or permits his horses or mules to run with intent to pass another conveyance, or to prevent such other conveyance from passing his own; or any person who rides any horse or mule, or drives any loose animals over any public road, street or highway, public square or school ground at such a speed as to endanger human life, or the destruction of property, shall be deemed guilty of a misdemeanor.

§ 4586. (2651) Every person who sells or furnishes, or ^{Selling liquor to Indians.} causes to be sold or furnished, intoxicating liquors to any Indian, is guilty of a misdemeanor.

§ 4587. (2652) If the owner of a mischievous animal, ^{Death from mischievous animals} knowing its propensities, wilfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large, or while not kept with ordinary care, kills any human being who has taken all the precaution which the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of a felony.

TITLE XI.

OF CRIMES AGAINST THE PUBLIC PEACE.

SECTION.	SECTION.
4588 Disturbance of public meetings.	4596 Prize fights.
4589 "Riot" defined.	4597 Persons present at prize fights.
4590 Riot, punishment of.	4598 Disturbing the peace.
4591 "Rout" defined.	4599 Refusing to disperse upon lawful command.
4592 "Unlawful assembly" defined.	4600 Exhibiting deadly weapon in rude, etc., manner or using the same unlawfully.
4593 Punishment of rout and unlawful assembly.	4601 Forceful entry and detainer.
4594 Remaining present at place of riot, etc., after warning to disperse.	4602 Returning to take possession of lands after being removed by legal proceedings.
4595 Magistrates neglecting or refusing to disperse rioters.	
Disturbance of public meetings.	§ 4588. (2053) Every person who, without authority of law, wilfully disturbs or breaks up any assembly or meeting, not unlawful in its character, is guilty of a misdemeanor.
Riot defined.	§ 4589. (2054) Any use of force or violence, disturbing the public peace, or any threat to use such force or violence, if accompanied by immediate power of execution, by two or more persons acting together and without authority of law, is a riot.
Riot, punishment of	§ 4590. (2055) Every person who participates in any riot, is punishable by imprisonment in the penitentiary not exceeding two years, or by fine not exceeding one thousand dollars, or by both.
"Rout" defined.	§ 4591. (2056) Whenever two or more persons, assembled and acting together, make any attempt or advance towards the commission of an act which would be a riot if actually committed, such assembly is a rout.
"Unlawful assembly" defined.	§ 4592. (2057) Whenever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it or do a lawful act in a violent, boisterous or tumultuous manner, such assembly is an unlawful assembly.
Punishment of rout.	§ 4593. (2058) Every person who participates in any rout or unlawful assembly, is guilty of a misdemeanor.

§ 4594. (2060) Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

Remaining present at place of riot, etc., after warning to disperse.

§ 4595. (2061) If a magistrate or officer, having notice of an unlawful or riotous assembly, mentioned in this Chapter, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

Magistrate neglecting or refusing to disperse rioters.

§ 4596. (2062) Every person who engages in, instigates, encourages, or promotes any ring or prize fight, or any other premeditated fight or contention, (without deadly weapons), either as principal, aid, second, umpire, surgeon, or otherwise, is punishable by imprisonment in the penitentiary not exceeding two years.

Prize fights.

§ 4597. (2063) Every person wilfully present as a spectator at any fight or contention mentioned in the preceding section, is guilty of a misdemeanor.

Persons present at prize fights.

§ 4598. (2064) Every person who maliciously and wilfully disturbs the peace or quiet of any neighborhood, family, or person, by loud or unusual noise, or by tumultuous, or offensive conduct, or by threatening, traducing, quarreling, challenging to fight, or fighting, is punishable by fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding two months.

Disturbing the peace.

§ 4599. (2065) If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a public officer, the persons so offending are severally guilty of a misdemeanor.

Refusing to disperse upon lawful command.

§ 4600. (2066) Every person who, not in necessary self defense, in the presence of two or more persons, draws or exhibits any deadly weapon in a rude, angry, and threatening manner, or who, in any manner, unlawfully uses the same in any fight or quarrel, is guilty of a misdemeanor.

Exhibiting deadly weapons in rude, etc., manner, or using the same unlawfully.

§ 4601. (2067) Every person using or procuring, encouraging or assisting another to use, any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and in the manner allowed by law, is guilty of a misdemeanor.

Forceful entry and detainer.

Returning to
take posses-
sion of lands
after being re-
moved by le-
gal proceed-
ings.

§ 4602. (2967) Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal, or officer, and who afterwards unlawfully returns to settle, reside upon, or take possession of such lands, is guilty of a misdemeanor.

TITLE XII.

OF CRIMES AGAINST THE REVENUE AND PROPERTY OF THE TERRITORY.

SECTION.

4603 Embezzlement and falsification of accounts by public officers.
4604 Officers neglecting to pay over public moneys.
4605 "Public moneys" as used in the preceding section defined.
4606 Failure to pay over fines and forfeitures received, a misdemeanor.
4607 Obstructing officer in collecting revenue.

SECTION.

4608 Refusing to give assessor list of property or giving false name.
4609 Delivering receipts for poll taxes, other than prescribed by law, or collecting poll taxes, etc., without giving the receipt prescribed by law.
4610 Refusing to give name of person in employment, etc.
4611 Carrying on business without license.

Embezzlement
and falsifica-
tion of ac-
counts by pub-
lic officers.

§ 4603. (2968) Every officer of this Territory, or of any county, city, precinct, or district of this Territory and every other person charged with the receipt, safe keeping, transfer, or disbursement of public moneys, who either:

1. Without authority of law, appropriates the same or any portion thereof to his own use, or to the use of another; or,

2. Loans the same or any portion thereof; or,

3. Fails to keep the same in his possession until disbursed or paid out by authority of law; or,

4. Unlawfully deposits the same or any portion thereof in any bank, or with any banker or other person; or,

5. Knowingly keeps any false account, or makes any

false entry or erasure in any account of or relating to the same; or,

6. Fraudulently alters, falsifies, conceals, destroys or obliterates any such account; or,

7. Wilfully refuses or omits to pay over, on demand any public moneys in his hands, upon the presentation of a draft, order, or warrant drawn upon such moneys by competent authority; or,

8. Wilfully omits to transfer the same, when such transfer is required by law; or,

9. Wilfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him under any duty imposed by law so to pay over the same;

Is guilty of a felony.

§ 4604. ⁽²⁰⁶⁹⁾ Every officer charged with the receipt, safe keeping or disbursement of public moneys, who neglects or fails to keep and pay over the same, in the manner prescribed by law, is guilty of felony.

Officers neglecting to pay over public moneys.

§ 4605. ⁽²⁰⁷⁰⁾ The phrase "public moneys," as used in the two preceding sections, includes all bonds and evidences of indebtedness, and all moneys belonging to the Territory, or any city, county, precinct, or district therein, and all moneys, bonds, and evidences of indebtedness received or held by Territorial, county, district, city, or precinct officers in their official capacity.

"Public moneys" as used in the preceding section defined.

§ 4606. ⁽²⁰⁷¹⁾ If any clerk, justice of the peace, sheriff, or constable, who receives any fine or forfeiture, refuses or neglects to pay over the same according to law and within thirty days after the receipt thereof, he is guilty of a misdemeanor.

Failure to pay over fines and forfeitures received, a misdemeanor.

§ 4607. ⁽²⁰⁷²⁾ Every person who wilfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money, in which the people of this Territory are interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.

Obstructing officers in collecting revenue.

§ 4608. ⁽²⁰⁷³⁾ Every person who unlawfully refuses, upon demand to give to any school district, city or county assessor a list of his property subject to taxation, or to swear to such list, or who gives a false name or fraudulently refuses to give his true name to any assessor, when demanded by such

Refusing to give assessor list of property, or giving false name.

assessor, in the discharge of his official duties, is guilty of a misdemeanor.

Delivering receipts for poll taxes, other than prescribed by law, or collecting poll taxes, etc., without giving the receipt prescribed by law.

§ 1609. (2074) Every person who uses or gives any receipt, except that prescribed by law, as evidence of the payment of any poll tax, road tax, or license of any kind, or who receives payment of such tax or license without delivering the receipt prescribed by law, is guilty of a misdemeanor.

Refusing to give name of persons in employment, etc.

§ 1610. (2075) Every person who, when requested by the assessor, or collector of taxes or licenses refuses to give to such assessor or collector, the name and residence of each man in his employment, or to give such assessor or collector access to the building or place where such men are employed, is guilty of a misdemeanor.

Carrying on business without license.

§ 1611. (2076) Every person who commences, or carries on any business, trade, profession or calling, for the transaction or carrying on of which a license is required by any law of this Territory, or by any county regulation, without taking out the license required by law or by the county regulation, is guilty of a misdemeanor.

TITLE XIII.

OF CRIMES AGAINST PROPERTY.

- CHAPTER I. Arson.
 CHAPTER II. Burglary and housebreaking.
 CHAPTER III. Having possession of burglarious instruments and deadly weapons.
 CHAPTER IV. Forging and counterfeiting.
 CHAPTER V. Larceny.
 CHAPTER VI. Embezzlement.
 CHAPTER VII. Extortion.
 CHAPTER VIII. False personation and cheats.
 CHAPTER IX. Fraudulent destruction of property insured.
 CHAPTER X. False weights and measures.
 CHAPTER XI. Fraudulent insolvencies by corporations and other frauds in their management.
 CHAPTER XII. Malicious injuries to railroad bridges, highways, bridges and telegraphs.

CHAPTER I.

ARSON.

SECTION.

- 4612 Arson defined.
 4613 "Building" defined.
 4614 "Inhabited building" defined.
 4615 "Night time" defined.
 4616 "Burning" defined.

SECTION.

- 4617 Ownership of building.
 4618 Degrees of arson.
 4619 Arson of the first degree, arson of the second degree.
 4620 Punishment of arson.

§ 4612. ⁽²⁰⁷⁷⁾ Arson is the wilful and malicious burning of a building with intent to destroy it. Arson defined

§ 4613. ⁽²⁰⁷⁸⁾ Any house, edifice, structure, vessel or other erection, capable of affording shelter for human beings, or appurtenant to or connected with an erection so adapted, is a "building," within the meaning of this Chapter. "Building" defined.

§ 4614. ⁽²⁰⁷⁹⁾ Any building which has usually been occupied by any person lodging therein at night, is an "inhabited building," within the meaning of this Chapter. "Inhabited building" defined.

"Night time" defined. § 4615. ⁽²⁰⁸⁶⁾ The phrase "night time," as used in this Chapter, means the period between sunset and sunrise.

"Burning" defined. § 4616. ⁽²⁰⁸¹⁾ To constitute burning, within the meaning of this Chapter, it is not necessary that the building set on fire shall have been destroyed. It is sufficient that fire is applied so as to take effect upon any part of the substance of the building.

Ownership of building. § 4617. ⁽²⁰⁸²⁾ To constitute arson it is not necessary that a person other than the accused should have had ownership in the building set on fire. It is sufficient, that at the time of the burning another person was rightfully in possession of, or was actually occupying such building or any part thereof.

Degrees of arson. § 4618. ⁽²⁰⁸³⁾ Arson is divided into two degrees.

Arson of the first degree; arson of the second degree. § 4619. ⁽²⁰⁸⁴⁾ Maliciously burning in the night time an inhabited building in which there is at the time some human being, is arson in the first degree; all other kinds of arson are of the second degree.

Punishment of arson. § 4620. ⁽²⁰⁸⁵⁾ Arson is punishable by imprisonment in the penitentiary as follows:

1. Arson in the first degree, for not less than two years, nor more than fifteen years.

2. Arson in the second degree, for not less than one nor more than ten years.

CHAPTER II.

BURGLARY AND HOUSEBREAKING.

SECTION.

4621 Burglary defined.

4622 Punishment of burglary.

4623 Housebreaking defined.

SECTION.

4624 Punishment of housebreaking.

4625 "Night time" defined.

Burglary defined.

§ 4621. ⁽²⁰⁸⁶⁾ Every person who, in the night time, forcibly breaks and enters, or without force enters through any open door, window or other aperture, any house, room, apartment or tenement, or any tent, vessel, water craft or railroad car, with intent to commit larceny or any felony, is guilty of burglary. •

§ 4622. (2087) Burglary is punishable by imprisonment in the penitentiary not less than one nor more than ten years. Punishment of burglary.

§ 4623. (2088) Every person who, in the day time, enters any dwelling house, shop, warehouse, store, mill, barn, stable, outhouse, other building, vessel, or railroad car, with intent to steal or to commit any felony whatever therein, is guilty of housebreaking. Housebreaking defined.

§ 4624. (2089) Housebreaking is punishable by imprisonment in the penitentiary not less than six months nor more than three years. Punishment of housebreaking.

§ 4625. (2090) The phrase "night time," as used in this Chapter, means the period between sunset and sunrise. "Night time" defined.

CHAPTER III.

HAVING POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS.

SECTION.

SECTION.

4626 Having possession of any instrument with intent to commit burglary.

4627 Having possession of deadly weapon with intent to commit assault.

§ 4626. (2091) Every person having upon him a picklock, crowkey, bit, other instrument or tool, with intent feloniously to break or enter into any building, is guilty of a misdemeanor. Having possession of any instrument with intent to commit burglary.

§ 4627. (2092) Every person having upon him any deadly weapon, with intent to assault another, is guilty of a misdemeanor. Having possession of deadly weapon, etc.

CHAPTER IV.

FORGING AND COUNTERFEITING.

SECTION.	SECTION.
4628 Forgery of wills, conveyances, notes, bonds, etc., uttering forged notes, bonds, etc.; forgery of records and official returns.	4633 Passing or receiving forged notes.
4629 Making false entries in records or returns.	4634 Making, passing, or uttering fictitious bills, etc.
4630 Forgery of public and corporate seals.	4635 Counterfeiting coin, bullion, etc.
4631 Punishment of forgery.	4636 Punishment of counterfeiting.
4632 Forging telegraph messages.	4637 Possessing or receiving counterfeited coin, bullion, etc.
	4638 Making or possessing counterfeited dies or plates.

Forging of
wills, convey-
ances, notes,
bonds, etc.

§ 4628. Every person who, with intent to defraud another, falsely makes, alters, forges or counterfeits any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, passage ticket, power of attorney, or any certificate of any share, right or interest in the stock of any corporation or association, or any auditor's warrant for the payment of money at the treasury, county or city order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing or acquittance, release or receipt for money or goods, or any acquittance, release or discharge for any debt, account, suit, action, demand or other thing, real or personal, or any transfer or assurance of money, certificates of shares of stock, goods, chattels or other property whatever, or any letter of attorney or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien or convey any goods, chattels, lands or tenements or other estate, real or personal, or any acceptance or endorsement of any bill of exchange, promissory note, draft, order or assignment of any bond, writing obligatory or

Uttering
forged notes,
bonds, etc.

promissory note for money or other property, or counterfeits or forges the seal or handwriting of another; or utters, publishes, passes or attempts to pass as true or genuine any of the above named false, altered, forged or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged or counterfeited with intent to prejudice, damage or defraud any person; or who with intent to defraud, alters, corrupts or falsifies any record of any will, codicil, conveyance or other instrument, the record of which is by law evidence, or any record of any judgment of a court, or the return of any officer to any process of any court, is guilty of forgery.

Forging of records and official returns.

§ 4629. ⁽²⁰⁰⁴⁾ Every person who, with intent to defraud another, makes, forges or alters any entry in any book of records, or any instrument purporting to be any record or return specified in the preceding section, is guilty of forgery.

Making false entries in records or returns.

§ 4630. ⁽²⁰⁰⁵⁾ Every person who, with intent to defraud another, forges or counterfeits the seal of this Territory, the seal of any public officer authorized by law, the seal of any court of record, or the seal of any corporation, or any other public seal, authorized or recognized by the laws of this Territory or of any State, government or country, or who falsely makes, forges or counterfeits any impression purporting to be an impression of any such seal, or who has in his possession any such counterfeited seal or impression thereof, knowing it to be counterfeited, and wilfully conceals the same, is guilty of forgery.

Forging of public and corporate seals.

§ 4631. ⁽²⁰⁰⁶⁾ Forgery is punishable by imprisonment in the penitentiary for not less than one nor more than ten years.

Punishment of forgery.

§ 4632. ⁽²⁰⁰⁷⁾ Every person who knowingly and wilfully sends by telegraph to any person a false or forged message, purporting to be from such telegraph office, or from any other person, or who wilfully delivers, or causes to be delivered to any person any such message falsely purporting to have been received by telegraph, or who furnishes or conspires to furnish, or causes to be furnished to any agent, operator, or employee, to be sent by telegraph or to be delivered, any such message, knowing the same to be false or forged, with the intent to deceive, injure or defraud another, is punishable by imprisonment in the penitentiary not exceeding five years, or in the county jail not exceeding one year, or by fine

Forging telegraphic messages.

not exceeding one thousand dollars, or by both fine and imprisonment.

Passing or receiving forged notes.

§ 4633. ⁽²⁰⁰⁴⁾ Every person who has in his possession, or receives from another person, any forged promissory note or bank bill, or bills, for the payment of money or property, with the intention to pass the same, or to permit, cause, or procure, the same to be uttered or passed, with the intention to defraud any person, knowing the same to be forged or counterfeited, or has or keeps in his possession any blank or unfinished note or bank bill made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause, or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered or passed, to defraud any person, is punishable by imprisonment in the penitentiary for not less than one nor more than ten years.

Making, passing or uttering fictitious bills, etc.

§ 4634. ⁽²⁰⁰⁵⁾ Every person who makes, passes, utters, or publishes, with intention to defraud any other person, or who, with the like intention, attempts to pass, utter, or publish, or who has in his possession, with like intent to utter, pass, or publish, any fictitious bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of some bank, corporation, co-partnership, or individual, when, in fact, there is no such bank, corporation, co-partnership, or individual in existence, knowing the bill, note, check, or instrument in writing to be fictitious, is punishable by imprisonment in the penitentiary for not less than one nor more than ten years.

Counterfeiting coin, bullion, etc.

§ 4635. ⁽²⁰⁰⁰⁾ Every person who counterfeits any of the species of gold or silver coin current in this Territory, or any kind or species of gold dust, gold or silver bullion, or bars, lumps, pieces, or nuggets, or who sells, passes, or gives in payment such counterfeited coin, dust, bullion, bars, lumps, pieces, or nuggets, or permits, causes, or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeited, is guilty of counterfeiting.

§ 4636. ⁽²¹⁰¹⁾ Counterfeiting is punishable by imprison-

ment in the penitentiary for not less than one nor more than Punishment of counterfeit- ing.
ten years.

§ 4637. (2102) Every person who has in his possession, or Possessing or receiving counterfeit coin, bullion, etc.
receives for any other person, any counterfeited gold or silver coin of the species current in this Territory, or any counter-
feit gold dust, gold or silver bullion or bars, lumps, pieces, or nuggets, with the intention to sell, utter, put off, or pass the same, or permits, causes, or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeited, is punishable by imprisonment in the penitentiary not less than one nor more than ten years.

§ 4638. (2103) Every person who makes, or knowingly has Making or possessing counterfeit dies or plates.
in his possession any die, plate, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting coin current in this Territory, or in counterfeiting gold dust, gold or silver bars, bullion, lumps, pieces, or nuggets, or in counterfeiting bank notes or bill, is punishable by imprisonment in the penitentiary not less than one nor more than ten years; and all such dies, plates, apparatus, paper, metal, or machine, intended for the purpose aforesaid, must be destroyed.

CHAPTER V.

LARCENY.

SECTION.	SECTION.
4639 "Larceny" defined.	4649 Severing and removing part of realty, declared larceny.
4640 Larceny from mining claim, tunnel, etc.	4650 Receiver of stolen property.
4641 Larceny of lost property.	4651 Larceny committed and stolen property received, out of this Territory.
4642 Grand and petit larceny.	4652 Stealing gas.
4643 "Grand larceny" defined.	4653 Stealing water.
4644 Punishment of grand larceny.	4654 Larceny of goods saved from fire.
4645 Punishment of petit larceny.	
4646 Larceny of written instruments.	
4647 Value of passage tickets.	
4648 Written instruments completed but not delivered.	

§ 4639. (2104) Larceny is the felonious stealing, taking, Larceny defined.
carrying, leading, or driving away the personal property of another.

Larceny from
mining claim,
tunnel, etc.

§ 4640. ⁽²¹⁰⁵⁾ Every person who shall feloniously steal, take, and carry away, or attempt to take, steal, and carry away from any mining claim, tunnel, sluice, under current, rifle box, or sulphuret machine, any gold dust, amalgam, or quicksilver, the property of another, shall be deemed guilty of larceny.

Larceny of
lost property.

§ 4641. ⁽²¹⁰⁶⁾ Every person who finds lost property under circumstances which give him knowledge of a means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner, and restore the property to him, is guilty of larceny.

Grand and
petit larceny.

§ 4642. ⁽²¹⁰⁷⁾ Larceny is divided into two degrees, the first of which is termed grand larceny; the second, petit larceny.

Grand larceny
defined.

§ 4643. ⁽²¹⁰⁸⁾ Grand larceny is larceny committed in either of the following cases:

1. When the property taken is of a value exceeding fifty dollars.

2. When the property is taken from the person of another.

As amended
March 11, 1886.

3. When the property taken is a horse, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, mule, jack, or jenny.

Petit larceny.

4. Larceny in other cases is petit larceny.

Punishment
of grand
larceny.

§ 4644. ⁽²¹⁰⁹⁾ Grand larceny is punishable by imprisonment in the penitentiary for not less than one nor more than ten years.

Punishment of
petit larceny.
As amended
Feb. 18, 1878.

§ 4645. ⁽²¹¹⁰⁾ Petit larceny is punishable by a fine in any sum less than three hundred dollars, or by imprisonment in the county jail not exceeding six months, or both.

Larceny of
written instru-
ments.

§ 4646. ⁽²¹¹¹⁾ If the thing stolen consists of any evidence of debt, or other written instrument, the amount of money due thereupon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, is the value of the thing stolen.

Value of pas-
sage tickets.

§ 4647. ⁽²¹¹²⁾ If the thing stolen is any ticket or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad or vessel

or other public conveyance, the price at which tickets entitling a person to a like passage are usually sold by the proprietors of such conveyance, is the value of such ticket, paper, or writing.

§ 4648. ⁽²¹⁴⁵⁾ All the provisions of this Chapter apply where the property taken is an instrument for the payment of money, evidence of debt, public security, or passage ticket, completed and ready to be issued or delivered, although the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner. Written instruments completed but not delivered

§ 4649. ⁽²¹⁴⁶⁾ The provisions of this Chapter apply where the thing taken is any fixture or part of the realty, and is severed at the time of the taking, in the same manner as if the thing had been severed by another person at some previous time. Severing and removing part of the realty, declared larceny.

§ 4650. ⁽²¹⁴⁵⁾ Every person who for his own gain, or to prevent the owner from again possessing his property, buys or receives any personal property, of the value of fifty dollars, knowing the same to have been stolen, is punishable by imprisonment in the penitentiary not exceeding five years; if the value of the property so bought or received be less than fifty dollars, he is guilty of a misdemeanor; *Provided*, That if such property so bought or received be a horse, mare, gelding, cow, steer, ox, calf, mule, jack, jenny, goat or sheep, he is guilty of a felony. Receiver of stolen property.

§ 4651. ⁽²¹⁴⁶⁾ Every person who in another State or country steals the property of another, or receives such property knowing it to have been stolen, and brings the same into this Territory, may be convicted and punished in the same manner as if such larceny or receiving had been committed in this Territory. Larceny committed and stolen property received out of this Territory.

§ 4652. ⁽²¹⁷⁷⁾ Every person who, with intent to injure or defraud, makes or causes to be made any pipe, tube or other instrument and connects the same or causes it to be connected, with any main, service pipe or other pipe for conducting or supplying illuminating gas, in such manner as to supply illuminating gas to any burner or orifice, by or at which illuminating gas is consumed, around or without passing through the meter provided for the measuring and registering the quantity consumed, or in any other manner so as to evade payment therefor, and every person who, with like in- Stealing gas.

tent, injures or alters any gas meter or obstructs its action, is guilty of a misdemeanor.

Stealing
Water.

§ 4653. ⁽²¹¹⁸⁾ Every person who, with intent to injure or defraud, connects or causes to be connected, any pipe, tube or other instrument with any main, service pipe or other pipe or conduit or flume for conducting water, for the purpose of taking water from such main, service pipe, conduit or flume without the knowledge of the owner thereof, and with intent to evade payment therefor is guilty of a misdemeanor.

Larceny of
goods saved
from fire.

§ 4654. ⁽²¹¹⁹⁾ Every person who saves from fire, or from a building endangered by fire, any property and for two days thereafter corruptly neglects to notify the owner or city marshal or sheriff of the county thereof, is guilty of a felony.

CHAPTER VI.

EMBEZZLEMENT.

SECTION.

- 4655 "Embezzlement" defined.
4656 When officer, etc., of any association, guilty of embezzlement.
4657 When carriers or other persons having property for transportation for hire guilty of embezzlement.
4658 When trustee, banker, etc., guilty of embezzlement.

SECTION.

- 4659 When bailee, tenant, or lodger, guilty of embezzlement.
4660 When clerk, agent, or servant guilty of embezzlement.
4661 Distinct act of taking.
4662 Evidence of debt undelivered may be subject of embezzlement.
4663 Claim of title ground of defense.
4664 Punishment for embezzlement.

Embezzlement
defined.

§ 4655. ⁽²¹²⁰⁾ Embezzlement is the fraudulent appropriation of property by a person to whom it has been entrusted.

When officer,
etc., of any
association
guilty of em-
bezzlement.

§ 4656. ⁽²¹²¹⁾ Every officer, director, trustee, clerk, servant or agent of any association, society or corporation (public or private), who fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust,

any property which he has in his possession or under his control by virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

§ 4657. ⁽²¹²²⁾ Every carrier or other person having under his control personal property for the purpose of transportation for hire, who fraudulently appropriates it to any use or purpose inconsistent with the safe keeping of such property and its transportation according to his trust, is guilty of embezzlement, whether he has broken the package in which such property is contained, or has otherwise separated the items thereof, or not.

When carrier or other person having property for transportation for hire, guilty of embezzlement.

§ 4658. ⁽²¹²³⁾ Every trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator or collector or person otherwise entrusted with or having in his control property for the use of any other person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

When trustee, banker, etc., guilty of embezzlement.

§ 4659. ⁽²¹²⁴⁾ Every person entrusted with any property as bailee, tenant or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his use, is guilty of embezzlement.

When bailee, tenant, or lodger guilty of embezzlement.

§ 4660. ⁽²¹²⁵⁾ Every clerk, agent or servant of any person who fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use any property of another which has come into his control or care by virtue of his employment as such clerk, agent or servant, is guilty of embezzlement.

When clerk, agent or servant guilty of embezzlement.

§ 4661. ⁽²¹²⁶⁾ A distinct act of taking is not necessary to constitute embezzlement.

Distinct act of taking.

§ 4662. ⁽²¹²⁷⁾ Any evidence of debt, negotiable by delivery only, and actually executed, is the subject of embezzlement, whether it has been delivered or issued as a valid instrument or not.

Evidence of debt undelivered may be subject of embezzlement.

§ 4663. ⁽²¹²⁸⁾ Upon any indictment for embezzlement it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith, even though such claim is untenable.

Claim of title a ground of defense.

Punishment of
embezzle-
ment.

§ 4664. ⁽²¹²⁵⁾ Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled, and where the property embezzled is an evidence of debt or right of action, the sum due upon it, or secured to be paid by it, shall be taken as its value.

CHAPTER VII.

EXTORTION.

SECTION.

4665 "Extortion" defined.

4666 What threats may constitute extortion.

4667 Punishment of extortion in certain cases.

4668 Punishment of extortion committed under color of official right.

SECTION.

4669 Obtaining signature by means of threats

4670 Sending threatening letters with intent to extort money, etc.

4671 Attempts to extort money or property by means of verbal threats.

4672 Officers of railroad companies making overcharges.

"Extortion"
defined.

§ 4665. ⁽²¹²⁶⁾ Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right.

What threats
may consti-
tute extortion.

§ 4666. ⁽²¹²⁷⁾ Fear, such as will constitute extortion, may be induced by a threat, either:

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his, or member of his family; or,

2. To accuse him, or any relative of his, or member of his family, of any crime; or,

3. To expose, or impute to him or them any deformity or disgrace; or,

4. To expose any secret affecting him or them.

Punishment of
extortion in
certain cases.

§ 4667. ⁽²¹²⁸⁾ Every person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force, or any threat, such as is mentioned in the preceding section, is punishable by imprisonment in the penitentiary not exceeding three years.

§ 4668. ⁽²¹²⁹⁾ Every person who commits any extortion under color of official right, in cases for which a different

punishment is not prescribed in this Code, is guilty of a misdemeanor.

§ 4669. ⁽²¹³⁴⁾ Every person who by any extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge, or right of action created, is punishable in the same manner as if the actual delivery of such debt, demand, charge, or right of action were obtained.

Punishment of extortion committed under color of official right.

Obtaining signature by means of threats.

§ 4670. ⁽²¹³⁵⁾ Every person who, with intent to extort any money or other property from another, sends or delivers to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat such as is specified in section three hundred and one (1) is punishable in the same manner as if such money or property were actually obtained by means of such threat.

Sending threatening letters with intent to extort money, etc.

§ 4671. ⁽²¹³⁶⁾ Every person who unsuccessfully attempts, by means of any verbal threat, such as is specified in section three hundred and one, to extort money or other property from another, is guilty of a misdemeanor.

Attempts to extort money or property by means of verbal threats.

§ 4672. ⁽²¹³⁷⁾ Every officer, agent, or employee of a railroad company who asks or receives a greater sum than is allowed by law for the carriage of passengers or freight, is guilty of a misdemeanor.

Officers of railroad companies making over charges.

CHAPTER VIII.

FALSE PERSONATION AND CHEATS.

SECTION.

4673 Marrying under false personation.

4674 Falsely personating another in other cases.

SECTION.

4675 Receiving property in false character.

4676 Fraudulent conveyances.

4677 Obtaining money by false pretenses.

§ 4673. ⁽²¹³⁸⁾ Every person who falsely personates another, and in such assumed character marries or pretends to

Marrying under false personation.

(1) Sec. 301 here referred to is the preceding § 4666.

marry, or to sustain the marriage relation towards another, with or without the connivance of such other, is guilty of a felony.

Falsely personating another in other cases.

§ 4674. (2139) Every person who falsely personates another and in such assumed character, either:

1. Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take such bail or surety; or,

2. Verifies, publishes, acknowledges or proves, in the name of another person, any written instrument, with intent that the same may be recorded, delivered, and used as true; or,

3. Does any other act whereby, if it were done by the person falsely personated, he might, in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person;

Is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars; or by both.

Receiving property in a false character.

§ 4675. (2140) Every person who falsely personates another, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person, or to deprive the true owner thereof, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

Fraudulent conveyances.

§ 4676. (2141) Every person who is a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods, or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract, or conveyance, had, made or contrived with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands, is guilty of a misdemeanor.

Obtaining money by false pretenses.

§ 4677. (2142) Every person who knowingly and designedly, by false or fraudulent representations or pretenses, defrauds any other person of money or property is punishable by imprisonment in the county jail, not exceeding one year, and by fine not exceeding three times the value of the money or property so obtained.

CHAPTER IX.

FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

SECTION.

4678 Burning or destroying property insured.

SECTION.

4679 Presenting false proofs in support of a claim upon policy of insurance.

§ 4678. ⁽²¹⁴³⁾ Every person who wilfully burns, or in any other manner injures or destroys any property which is at the time insured against loss or damage by fire or by any other casualty, with intent to defraud or prejudice the insurer, whether the same be the property of or in possession of such person or of any other, is punishable by imprisonment in the penitentiary not less than one nor more than ten years.

§ 4679. ⁽²¹⁴⁴⁾ Every person who presents or causes to be presented any false or fraudulent claim, or any proof in support of any such claim, upon any contract of insurance for the payment of any loss, or who prepares, makes, or subscribes any account, certificate of survey, affidavit, or proof of loss, or other book, paper, or writing with intent to present or use the same, or to allow it to be presented or used in support of any such claim, is punishable by imprisonment in the penitentiary not exceeding three years, or by a fine not exceeding one thousand dollars, or by both.

CHAPTER X.

FALSE WEIGHTS AND MEASURES.

SECTION.

SECTION.

- 4680 "False weight" and "measure" defined.
 4681 Using false weights and measures.
 4682 Stamping false weight, measure, or tare on casks or packages.

"False weight" and "measure" defined.

§ 4680. ⁽²¹⁴⁵⁾ A false weight or measure is one which does not conform to the standard established by the laws of the United States of America.

Using false weights or measures.

§ 4681. ⁽²¹⁴⁶⁾ Every person who uses any weight or measure, knowing it to be false, by which use another is defrauded or otherwise injured, is guilty of a misdemeanor.

Stamping false weight, measure or tare on casks or packages.

§ 4682. ⁽²¹⁴⁷⁾ Every person who knowingly marks or stamps false or short weight or measure, or false tare, on any cask or package, or car, or knowingly sells or offers for sale, any cask or package or other article so marked, is guilty of a misdemeanor.

CHAPTER XI.

FRAUDULENT INSOLVENCIES BY CORPORATIONS AND OTHER FRAUDS IN
THEIR MANAGEMENT.

SECTION.	SECTION.
4683 Fraud in subscription for stock of corporation.	4691 Officer of corporation to permit inspection of its books.
4684 Frauds in procuring organization of corporation or increasing its capital.	4692 Officer of corporation contracting debt in its behalf exceeding its available means.
4685 Unauthorized use of name in prospectus, etc.	4693 Debt contracted in violation of last section not invalid.
4686 Misconduct of directors of stock corporations.	4694 Director of corporation presumed to have knowledge of its affairs.
4687 Savings bank officer overdraw- ing his account.	4695 Director present at a meeting, when presumed to have assented to proceedings.
4688 Receiving deposits in insolvent banks.	4696 Director absent from meeting, when presumed to have assented to proceedings.
4689 Frauds in keeping accounts in books of corporations.	4697 Foreign corporations.
4690 Officer of corporation publishing false reports of its condition.	4698 "Director" defined.

§ 4683. ⁽²¹⁴⁸⁾ Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

Frauds in
subscription
for stock cor-
porations.

§ 4684. ⁽²¹⁴⁹⁾ Every officer, agent, or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to be allowed an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by

Frauds in pro-
curing orga-
nization of cor-
poration or in-
creasing its
capital stock.

imprisonment in the penitentiary not less than one year nor more than ten years.

Unauthorized
use of name in
prospectus,
etc.

§ 4685. (2151) Every person who without being authorized so to do, subscribes the name of another to or inserts the name of another in any prospectus, circular, or other advertisement, or announcement of any corporation or joint stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

Misconduct of
directors of
stock corpora-
tions.

§ 4686. (2151) Every director of any stock corporation who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended either:

1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation; or,

3. To discount or receive any note or other evidence of debt in payment of any instalment actually called in and required to be paid, or with the intent to provide the means of making such payment; or,

4. To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; or,

5. To receive from any other stock corporation in exchange for the shares, notes, bonds or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds or other evidences of debt issued by such corporation;

Is guilty of a misdemeanor.

Savings bank
officer over-
drawing his
account.

§ 4687. (2152) Every officer, agent, teller or clerk of any savings bank who knowingly overdraws his account with such bank and thereby wrongfully obtains the money, note or funds of such bank, is guilty of a misdemeanor.

Receiving de-
posits in in-
solvent banks.

§ 4688. (2153) Every officer, agent, teller or clerk of any bank and every individual banker, or agent, teller or clerk of any individual banker, who receives any deposits, knowing that such bank, or association, or banker, is insolvent, is guilty of a misdemeanor.

§ 4689. ⁽²¹⁵⁴⁾ Every director, officer or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent or member of any corporation or joint-stock association who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes, or concurs in making, any false entries, or omits, or concurs in omitting, to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the penitentiary not less than one nor more than five years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Frauds in keeping accounts in books of corporation.

§ 4690. ⁽²¹⁵⁵⁾ Every director, officer or agent of any corporation or joint stock association who knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false, other than such as are mentioned in this Chapter, is guilty of a misdemeanor.

Officers of corporation publishing false reports of its condition.

§ 4691. ⁽²¹⁵⁶⁾ Every officer or agent of any corporation, having or keeping an office within this Territory, who has in his custody or control any book, paper or document of such corporation and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

Officers of corporation to permit an inspection of its books.

§ 4692. ⁽²¹⁵⁷⁾ Every officer, agent, or stockholder of any railroad company, who knowingly assents to, or has an agency in contracting any debt by or on behalf of such company, unauthorized by a special law for the purpose, the amount of which debt, with other debts of the company, exceeds its available means for the payment of its debts, in its possession, under its control, and belonging to it at the time such debt is contracted, including its bona fide and available stock sub-

Officers of railroad company contracting debt in its behalf exceeding its available means.

scriptions, and exclusive of its real estate, is guilty of a misdemeanor.

Debt contracted in violation of last section not invalid.

§ 4693. ⁽²¹⁶⁸⁾ The last section does not affect the validity of a debt created in violation of its provisions, as against the company.

Director of corporation presumed to have knowledge of its affairs.

§ 4694. ⁽²¹⁶⁹⁾ Every director of a corporation or joint stock association is deemed to possess such knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of this Chapter.

Director present at meeting when presumed to have assented to proceedings.

§ 4695. ⁽²¹⁷⁰⁾ Every director of a corporation or joint stock association who is present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this Chapter occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires his dissent therefrom to be entered in the minutes of the directors.

Director absent from meeting when presumed to have assented to proceedings.

§ 4696. ⁽²¹⁷¹⁾ Every director of a corporation or joint stock association, although not present at a meeting of the directors at which any act, proceeding, or omission of such directors in violation of this Chapter occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not within that time cause, or in writing require, his dissent from such illegality to be entered in the minutes of the directors.

Foreign corporations.

§ 4697. ⁽²¹⁷²⁾ It is no defense to a prosecution for a violation of the provisions of this Chapter, that the corporation was one created by the laws of any State, government, or country, if it was one carrying on business or keeping an office therefor within this Territory.

"Director" defined.

§ 4698. ⁽²¹⁷³⁾ The term "director" as used in this Chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

CHAPTER XII.

OF MALICIOUS INJURIES TO RAILROAD BRIDGES, HIGHWAYS, BRIDGES AND
TELEGRAPHS.

SECTION.

- 4699 Injuries to railroads and railroad bridges.
 4700 Injuries to railroads for horse cars.
 4701 Injuries to highways, private ways and bridges.

SECTION.

- 4702 Injuries to toll houses and gates.
 4703 Injuries to milestones and guide boards.
 4704 Injuring telegraph lines.

§ 4699. ⁽²¹⁶⁴⁾ Every person who maliciously either:

1. Removes, displaces, injures, or destroys any part of any railroad, for steam cars, or any track of any such railroad, or any such branch or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station house, or other structure or fixture, or any part thereof, attached to or connected with any such railroad; or,

Injuries to railroads and railroad bridges.

2. Places any obstruction upon the rails or track of any such railroad, or of any switch, branch, branchway, or turnout connected with any such railroad;

Is punishable by imprisonment in the penitentiary not exceeding five years.

§ 4700. ⁽²¹⁶⁵⁾ Every person who maliciously, either:

1. Removes, displaces, injures or destroys, any part of any railroad for horse-cars, or any track of any such railroad, or any branch, or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station house, or other structure or fixture, or any part thereof attached to or connected with any such railroad; or,

Injury to railroads for horse cars.

2 Places any obstruction upon the rails or track of any such railroad, or of any switch, branch, branchway, or turnout, connected with any such railroad;

Is guilty of a misdemeanor.

§ 4701. ⁽²¹⁶⁶⁾ Every person who maliciously digs up, removes, displaces, breaks, or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such highway or private way, is punishable by imprisonment in the penitentiary not

Injuries to highways, private ways and bridges.

exceeding three years or in the county jail not exceeding six months.

Injuries to
toll houses
and gates.

§ 4702. ⁽²¹⁶⁷⁾ Every person who maliciously injures or destroys any toll house or turnpike gate, is guilty of a misdemeanor.

Injuries to
milestones
and guide
boards.

§ 4703. ⁽²¹⁶⁸⁾ Every person who maliciously removes or injures any mile board, post, or stone, or guide post, or any inscription on such, erected upon any highway, is guilty of a misdemeanor.

Turning
telegraph
lines.

§ 4704. ⁽²¹⁶⁹⁾ Every person who maliciously takes down, removes, injures, or obstructs any line of telegraph or any part thereof, or appurtenance or apparatus connected therewith, or severs any wire thereof, is guilty of a misdemeanor.

TITLE XIV.

OF MALICIOUS MISCHIEF.

SECTION,	SECTION.
4705 Malicious mischief in general defined.	4717 Destroying or tearing down notices, etc., before expiration of time for which they were to remain set up.
4706 Specifications in following sections not restrictive of last section.	4718 Injuring or destroying written instrument.
4707 Poisoning cattle.	4719 Opening or publishing sealed letters.
4708 Killing, maiming or torturing animals.	4720 Disclosing contents of telegraphic message.
4709 Burning of buildings and other property not the subject of larceny.	4721 Altering telegraphic messages.
4710 Malicious injuries to freehold.	4722 Opening sealed envelope containing telegraphic dispatches.
4711 Injuries to standing crops.	4723 Injuring works of art or improvements in any city or village.
4712 Removing, defacing or altering land marks.	4724 Destroying works of literature, etc., in public libraries.
4713 Destroying or injuring jails.	4725 Breaking or obstructing gas or water pipes, etc.
4714 Destroying or injuring bridges, dams, levees, water dams, etc.	4726 Drawing water from works after they have been closed.
4715 Burning or injuring rafts.	4727 Using or turning water from canals, irrigating ditches, etc.
4716 Injuries to signals, monuments, etc., erected in United States survey.	

§ 4705. ⁽²¹⁷⁰⁾ Every person who maliciously injures or destroys any real or personal property not his own, in cases otherwise than such as are specified in this Code, is guilty of a misdemeanor.

Malicious mischief in general defined.

§ 4706. ⁽²¹⁷¹⁾ The specification of the acts enumerated in the following sections of this Chapter is not intended to restrict or qualify the interpretation of the preceding section.

Specifications in following sections not restrictive of last section.

§ 4707. ⁽²¹⁷²⁾ Every person who wilfully, unlawfully and maliciously administers any poison to an animal, the property of another, or maliciously exposes any poisonous substance, with intent that the same shall be taken or swallowed by any such animal, is punishable by imprisonment in the penitentiary not exceeding three years, or in the county jail not exceeding six months or by fine not exceeding three hundred dollars, or by both.

Poisoning cattle.

§ 4708. ⁽²¹⁷³⁾ Every person who maliciously kills,

Killing, maim-
ing or tortur-
ing animals.

maims, or wounds an animal, the property of another, or who maliciously and cruelly beats, tortures, or injures any animal, whether belonging to himself or another, is guilty of a misdemeanor.

Burning
bridges and
other prop-
erty not the
subject of
arson.

§ 4709. ⁽²¹⁷⁴⁾ Every person who wilfully and maliciously burns any bridge exceeding in value fifty dollars, or any building, snow shed, or vessel, not the subject of arson, or any stack of grain of any kind, or of hay, or any growing or standing grain, grass, or tree, or any fence, not the property of such person, is punishable by imprisonment in the penitentiary for not less than one nor more than ten years.

Malicious in-
juries to free-
hold.

§ 4710. ⁽²¹⁷⁵⁾ Every person who wilfully and maliciously commits any trespass, by either:

1. Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the land of another; or,

2. Carrying away any kind of wood or timber that has been cut down and is lying on such lands; or,

3. Maliciously injuring or severing from the freehold of another anything attached thereto, or the produce thereof; or,

4. Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil, or stone; or,

5. Digging, taking, or carrying away from any land in any of the cities of the Territory, laid down on the map or plan of such city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone; or,

6. Putting up, affixing, fastening, printing, or painting upon any property belonging to the Territory or to any city, county, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for, any commodity, whether for sale or otherwise, or any picture, sign or device intended to call attention thereto; is guilty of a misdemeanor.

§ 4711. ⁽²¹⁷⁶⁾ Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits, or vege-

tables, the property of another, in any case for which a punishment is not otherwise prescribed by this Code, is guilty of a misdemeanor. Injuries to standing crops.

§ 4712. ⁽²¹⁷⁷⁾ Every person who either:

1. Maliciously removes any monument erected for the purpose of designating any point in the boundary of any lot or tract of land, at a place where a subaqueous telegraph cable lies; or, Removing, defacing, or altering land marks.

2. Maliciously defaces or alters the marks upon any such monument; or,

3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks;

Is guilty of a misdemeanor.

§ 4713. ⁽²¹⁷⁸⁾ Every person who wilfully and intentionally breaks down, pulls down, or otherwise destroys or injures any public jail or other place of confinement, is guilty of felony. Destroying or injuring jails.

§ 4714. ⁽²¹⁷⁹⁾ Every person who wilfully and maliciously cuts, breaks, injures, or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, or to drain or reclaim any swamp and overflowed, or marsh land, or to conduct water for mining, manufacturing, reclamation, or agricultural purposes, or any embankment necessary to the same, or either of them; or wilfully or maliciously makes or causes to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same; or draws up, cuts, or injures any piles fixed in the ground, and used for securing any lake or river bank or walls, or any dock, quay, jetty, or lock, is guilty of a misdemeanor. Destroying or injuring bridges, dams, levees, water dams, etc.

§ 4715. ⁽²¹⁸⁰⁾ Every person who wilfully and maliciously burns, injures or destroys any pile or raft of wood, plank, boards or other lumber, or any part thereof, or cuts loose or sets adrift any such raft or any part thereof, or cuts, breaks, injures, sinks, or sets adrift any vessel, boat, or skiff, the property of another, is punishable by a fine in any sum less than three hundred dollars, or by imprisonment in the county jail not exceeding six months. Burning or injuring rafts.

§ 4716. ⁽²¹⁸¹⁾ Every person who wilfully injures, defaces,

As amended
Feb. 18, 1870.

Injuries to
signals, monu-
ments, etc.,
erected in
United States
survey.

or removes any signal, monument, building, or appurtenance thereto, placed, erected or used by persons engaged in the United States survey, is guilty of a misdemeanor.

Destroying or
tearing down
notices, etc.,
before expira-
tion of time
for which
they were to
remain set up.

§ 4717. ⁽²¹⁸²⁾ Every person who intentionally defaces, obliterates, tears down, or destroys any copy of transcript, or extract from, or of any law of the United States, or of this Territory, or any proclamation, advertisement, or notification set up at any place in this Territory, by authority of any law of the United States or of this Territory, or by order of any court, before the expiration of the time for which the same was to remain set up, is punishable by fine not less than twenty nor more than one hundred dollars, or by imprisonment in the county jail not more than one month.

Injuring or de-
stroying
written in-
struments.

§ 4718. ⁽²¹⁸³⁾ Every person who maliciously mutilates, tears, defaces, obliterates or destroys any written instrument, the property of another, the false making of which would be forgery, is punishable by imprisonment in the penitentiary for not less than one nor more than two years.

Opening or
publishing
sealed letters.

§ 4719. ⁽²¹⁸⁴⁾ Every person who wilfully and corruptly opens or reads, or causes to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter, or by the person to whom it is addressed, and every person who, without the like authority, publishes any of the contents of such letter, knowing the same to have been unlawfully opened, is guilty of a misdemeanor.

Disclosing
contents of
telegraphic
message.

§ 4720. ⁽²¹⁸⁵⁾ Every person who wilfully and corruptly discloses the contents of a telegraphic message, or any part thereof, addressed to another person, without the permission of such person, is punishable by imprisonment in the penitentiary not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both fine and imprisonment.

Altering tele-
graphic mes-
sage.

§ 4721. ⁽²¹⁸⁶⁾ Every person who wilfully alters the purport, effect or meaning of a telegraphic message, to the injury of another, is punishable as provided in the preceding section.

Opening
sealed envel-
opes contain-
ing tele-
graphic dis-
patches.

§ 4722. ⁽²¹⁸⁷⁾ Every person not connected with any telegraphic office who, without the authority or consent of the person to whom the same may be directed, wilfully opens any sealed envelope enclosing a telegraphic message and addressed to any other person, with the purpose of learning the contents of such message, or who fraudulently represents any

other person, and thereby procures to be delivered to himself any telegraphic message addressed to such other person, with the intent to use, destroy, or detain the same from the person or persons entitled to receive such message, is punishable as provided in the two preceding sections.

§ 4723. ⁽²¹⁸⁸⁾ Every person, not the owner thereof, who wilfully injures, disfigures, or destroys any monument, work of art, or useful or ornamental improvement within the limits of any village or city, or any shade tree or ornamental plant growing thereon, whether situated upon private ground or on any street, sidewalk, or public park or place, is guilty of a misdemeanor.

Injuring
works of art
or improve-
ments
in any city or
village

§ 4724. ⁽²¹⁸⁹⁾ Every person who maliciously cuts, tears, defaces, breaks, or injures any book, map, chart, picture, engraving, statue, coin, model, apparatus, or other work of literature, art, or mechanics, or object of curiosity deposited in any public library, gallery, museum, collection, fair, or exhibition, is guilty of a misdemeanor.

Destroying
works of liter-
ature, etc., in
public libra-
ries.

§ 4725. ⁽²¹⁹⁰⁾ Every person who wilfully breaks, digs up, obstructs, or injures any pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenance or appendages therewith connected, is guilty of a misdemeanor.

Breaking or
obstructing
gas or water
pipes.

§ 4726. ⁽²¹⁹¹⁾ Every person who, with intent to defraud or injure, opens or causes to be opened, or draws water from any stopcock or faucet by which the flow water is controlled, after having been notified that the same has been closed or shut for specific cause, by order of competent authority, is guilty of a misdemeanor.

Drawing wa-
ter from works
after they
have been
closed.

§ 4727. ⁽²¹⁹²⁾ Any person who, in violation of any right of any other person, wilfully turns or uses the water, or any part thereof, of any canal, ditch, or reservoir, except at a time or times, when the use of such water has been duly distributed to such person, or wilfully uses any greater quantity of such water than has been duly distributed to him, or in any way changes the flow of water, when lawfully distributed for irrigating or other useful purposes, except when duly authorized to make such change, or wilfully and maliciously breaks or injures any dam, canal, watergate, ditch, or other means of diverting or conveying water for irrigation, or other useful purposes, is guilty of a misdemeanor.

Using or turn-
ing water be-
longing to
others, etc.,
a misde-
meanor.

Feb. 20, 1880.

TITLE XV.

CHAPTER II. *

OF OTHER AND MISCELLANEOUS OFFENCES.

SECTION.

- 4728 Neglect or postponement out of regular order of telegraphic messages, limitations.
- 4729 Agent, operator, or employee using information from messages.
- 4730 Claudestinely learning the contents of a telegraphic message.
- 4731 Bribing telegraphic operator.

SECTION.

- 4732 Breaking, injuring, or interfering with telegraph line or apparatus.
- 4733 Vagrants.
- 4734 Sending letters threatening to expose another.
- 4735 Disposal of fines collected under this and preceding Chapter.

Neglect or postpone-
ment out of
regular order
of telegraphic
messages.

Limitations.

§ 4728. Every agent, operator, or employee of any telegraph office, who wilfully refuses or neglects to send any message received at such office for transmission, or wilfully postpones the same out of its order, or wilfully refuses or neglects to deliver any message received by telegraph, is guilty of a misdemeanor. Nothing herein contained shall be construed to require any message to be received, transmitted, or delivered, unless the charges thereon have been paid or tendered, nor to require the sending, receiving or delivering of any message counseling, aiding, abetting or encouraging treason against the government of the United States or the resistance to the lawful authority, or any message calculated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime.

Agent, operat-
or or em-
ployee using
information
from mes-
sage.

§ 4729. Every agent, operator or employee of any telegraph office who in any way uses or appropriates any information derived by him from any private message passing through his hands and addressed to any other person, or in any other manner acquired by him by reason of his trust as such agent, operator or employee, or trades or speculates

(*) Chapter I., Title XV. repealed.

upon any such information so obtained, or in any manner turns, or attempts to turn, the same to his own account, profit or advantage, is punishable by imprisonment in the penitentiary not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

§ 4730. ⁽²²⁰⁵⁾ Every person who, by means of any machine, instrument or contrivance, or in any other manner, wilfully and fraudulently reads, or attempts to read, any message, or to learn the contents thereof, whilst the same is being sent over any telegraph line, or wilfully and fraudulently or clandestinely learns, or attempts to learn the contents or meaning of any message while the same is in any telegraph office, or is being received thereat or sent therefrom, or who uses or attempts to use, or communicates to others, any information so obtained, is punishable as provided in the preceding section.

Clandestinely learning the contents of a telegraphic message.

§ 4731. ⁽²²⁰⁶⁾ Every person who, by the payment or promise of any bribe, inducement or reward, procures or attempts to procure any telegraph agent, operator or employee to disclose any private message or the contents, purport, substance or meaning thereof, or offers to any such agent, operator or employee any bribe, compensation or reward for the disclosure of any private information received by him by reason of his trust as such agent, operator or employee, or uses or attempts to use any such information so obtained, is punishable as provided in the preceding section.

Bribing telegraphic operators.

§ 4732. ⁽²²⁰⁷⁾ Every person who shall wilfully and maliciously cut, break or throw down any telegraph pole, or any tree or other material used in any line of telegraph; or shall wilfully and maliciously break, displace or injure any insulator in use in any telegraph line; or shall wilfully and maliciously cut, break or remove from its insulator any wire used as a telegraph line; or shall, by the attachment of a ground wire or by any other contrivance, wilfully destroy the insulation of such telegraph line or intercept the transmission of the electric current through the same; or shall in any other manner wilfully injure, molest or destroy any property or materials appertaining to any telegraph line; or shall wilfully interfere with the use of any telegraph line; or obstruct or postpone the transmission of any message over the same, or procure or advise any such injury, interference or obstruc-

Breaking, injuring or interfering with telegraph line or apparatus.

tion, the person so offending shall be deemed guilty of a misdemeanor.

Vagrants

§ 4733. (2208) Every person (except an Indian) without visible means of living, who has the physical ability to work, and who does not for the space of ten days seek employment nor labor when employment is offered him; every healthy beggar who solicits alms as a business; every person who roams about from place to place without any lawful business; every idle or dissolute person, or associate of known thieves, who wanders about the streets at late or unusual hours of the night, or who lodges in any barn, shed, shop, outhouse, vessel or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof; every lewd and dissolute person, who lives in and about houses of ill-fame, and every common prostitute and common drunkard, is a vagrant and punishable by imprisonment in the county jail not exceeding ninety days.

Sending letters threatening to expose another.

§ 4734. (2209) Every person who knowingly and wilfully sends or delivers to another any letter or writing, whether subscribed or not, threatening to accuse him or another, of a crime, or to expose or publish any of his failings or infirmities, is guilty of a misdemeanor.

Disposal of fines collected under this and preceding Chapter

§ 4735. (2210) The fines collected under the provisions of this and the preceding Chapter, are to be paid one-half to the informer, and the balance into the county treasury of the county in which the offence is committed, for the benefit of district schools.

TITLE XVI.

GENERAL PROVISIONS.

SECTION.	SECTION.
4736 Acts made punishable by different provisions of this Code.	4747 When term of imprisonment commences, etc.
4737 Acts punishable under foreign law.	4748 Imprisonment for life.
4738 Foreign conviction or acquittal.	4749 Civil rights of convicts suspended.
4739 Contempts how punishable.	4750 Civil death.
4740 Mitigation of punishment in certain cases.	4751 Restriction on the two preceding sections.
4741 Sending letter, when deemed complete.	4752 Person of convict under protection of the law.
4742 Omission to perform duty when punishable.	4753 Conviction for crime does not work forfeiture of property.
4743 Attempts to commit crimes when punishable.	4754 Repealing section.
4744 Attempts to commit crimes how punishable.	4755 Repealing inconsistent acts.
4745 Restrictions upon the preceding sections.	4756 "Salting" mines and obtaining money under false pretenses.
4746 Second term of imprisonment when to commence.	4757 Changing samples of ores or bullion with intent to defraud.
	4758 Making false samples.
	4759 Section 1009 of Compiled Laws repealed.

§ 4736. ⁽²²¹¹⁾ An act or omission which is made punishable in different ways by different provisions of this Code may be punished under either of such provisions, but in no case can it be punished under more than one; an acquittal or conviction and sentence under either one, bars a prosecution for the same act or omission under any other.

Acts made punishable by different provisions of this Code.

§ 4737. ⁽²²¹²⁾ Any act or omission declared punishable by this Code is not less so because it is also punishable under the laws of a State, government, or country, unless the contrary is expressly declared.

Acts punishable under foreign law

§ 4738. ⁽²²¹³⁾ Whenever on the trial of an accused person it appears that upon a criminal prosecution under the laws of a State, government, or country, founded upon the act or omission in respect to which he is on trial, he has been acquitted or convicted it is a sufficient defense.

Foreign conviction or acquittal.

§ 4739. ⁽²²¹⁴⁾ A criminal act is not less punishable as a crime because it is also declared to be punishable as a contempt.

Contempts how punishable.

Mitigation of punishment in certain cases.

§ 4740. ⁽²²¹⁵⁾ When it appears, at the time of passing sentence upon a person convicted upon indictment, that such person has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order adjudging it a contempt, the court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion.

Sending letter when deemed complete.

§ 4741. ⁽²²¹⁶⁾ In the various cases in which the sending of a letter is made criminal by this Code, the offence is deemed complete from the time when such letter is deposited in any post office, or any other place, or delivered to any person, with intent that it shall be forwarded.

Omission to perform duty, when punishable.

§ 4742. ⁽²²¹⁷⁾ No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf and competent by law to perform it.

Attempts to commit crimes, when punishable.

§ 4743. ⁽²²¹⁸⁾ Any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was perpetrated by such person in pursuance of such attempt, unless the court, in its discretion, discharges the jury and directs such person to be tried for such crime.

Attempts to commit crime how punishable.

§ 4744. ⁽²²¹⁹⁾ Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempts, as follows:

1. If the offence so attempted is punishable by imprisonment in the penitentiary for five years, or more, or by imprisonment in a county jail, the person guilty of such attempt is punishable by imprisonment in the penitentiary, or in a county jail, as the case may be, for a term not exceeding one half the longest term of imprisonment prescribed upon a conviction of the offence so attempted.

2. If the offence so attempted is punishable by imprisonment in the penitentiary for any term less than five years, the person guilty of such attempt is punishable by imprisonment in the county jail for not more than one year.

3. If the offence so attempted is punishable by a fine the offender convicted of such attempt is punishable by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offence so attempted.

4. If the offence so attempted is punishable by imprisonment and by a fine, the offender convicted of such attempt may be punished by both imprisonment and fine, not exceeding one-half the longest term of imprisonment and one-half the largest fine which may be imposed upon a conviction for the offence so attempted.

§ 4745. ⁽²²²⁰⁾ The last two sections do not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed. Restrictions upon preceding sections.

§ 4746. ⁽²²²¹⁾ When any person is convicted of two or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction, must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be. Second term of imprisonment when to commence.

§ 4747. ⁽²²²²⁾ The term of imprisonment fixed by the judgment in a criminal action commences to run only upon the actual delivery of the defendant at the place of imprisonment and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term. When term of imprisonment commences, etc.

§ 4748. ⁽²²²³⁾ Whenever any person is declared punishable for a crime by imprisonment in the penitentiary for a term not less than any specified number of years and no limit to the duration of such imprisonment is declared, the court authorized to pronounce judgment upon such conviction, may in its discretion sentence such offender to imprisonment during his natural life, or for any number of years not less than that prescribed. Imprisonment for life.

§ 4749. ⁽²²²⁴⁾ A sentence of imprisonment in the penitentiary for any term less than for life suspends all civil rights of the person so sentenced and forfeits all public offices and all private trusts, authority or power during such imprisonment. Civil rights of convict suspended.

§ 4750. ⁽²²²⁵⁾ A person sentenced to imprisonment in the penitentiary for life is thereafter deemed civilly dead. Civil death.

Restriction on
two preceding
sections.

§ 4751. ⁽²²²⁶⁾ The provisions of the two preceding sections must not be construed to render the persons therein mentioned incompetent as witnesses upon the trial of a criminal action or proceeding, or incapable of making and acknowledging a sale or conveyance of property, or to make a last will and testament or to do such other acts as are permitted by law.

Person of
convict under
protection of
the law.

§ 4752. ⁽²²²⁷⁾ The person of a convict sentenced to imprisonment in the penitentiary is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced.

Conviction for
crime does
not work for
forfeiture of prop-
erty.

§ 4753. ⁽²²²⁸⁾ No conviction of any person for crime works any forfeiture of any property, except in cases in which a forfeiture is expressly imposed by law, and all forfeitures to the people of this Territory in the nature of a deodand, or where any person shall flee from justice, are abolished.

Repealing sec-
tion.

§ 4754. ⁽²²²⁹⁾ The several acts of the Governor and Legislative Assembly of this Territory in this section mentioned be and the same are hereby repealed:

1. The act entitled "An act in relation to crimes and punishments," approved March 6th, 1852.

2. The act entitled "An act in relation to defrauding, cheating, and swindling," approved January 20, 1865.

3. The act entitled "An act concerning libel," approved February 21, 1868.

4. The ordinance entitled "An ordinance prohibiting the sale of arms, ammunition or spirituous liquors to the Indians," approved March 28, 1850.

Repealing in-
consistent
acts.

§ 4755. ⁽²²³⁰⁾ All acts and parts of acts heretofore passed by the Governor and Legislative Assembly of this Territory inconsistent with the provision of this act be and the same are hereby repealed.

"Salting"
mines and ob-
taining money
under false
pretenses.
Feb 22, 1878.

§ 4756. s 1. Any person who shall, with intent to cheat or defraud, place in or upon any mine or mineral claim, any ores or specimens of ores not extracted therefrom, or ex-

hibit any ore or certificate of assay of ore, not extracted therefrom, for the purpose of selling any mine or mining claim or any interest therein, or who shall obtain any money or property by any such false pretense or artifice, shall be deemed guilty of a misdemeanor.

§ 4757. s 2. Any person who shall interfere with or in any manner change samples of ores or bullion produced for sampling, or change or alter samples or packages of ores or bullion which have been purchased for assaying, or who shall change or alter any certificate of sampling or assaying with intent to cheat or defraud, shall be deemed guilty of a misdemeanor.

Changing samples of ores or bullion with intent to defraud.

§ 4758. s 3. Any person who shall, with intent to cheat or defraud, make or publish a false sample of ore or bullion, or who shall make or publish or cause to be published a false assay of ore or bullion, is guilty of a misdemeanor.

Making false samples.

§ 4759. s 4. That section one thousand and nine (1009), Compiled Laws of Utah, is hereby repealed.

Section 1009 of Compiled Laws repealed.

TO PREVENT CRIME AGAINST ELECTIVE FRANCHISE.

SECTION.	SECTION.
4760 Wilfull neglect of duty under election laws, punishable by fine and imprisonment.	4766 Fraudulent acts of judge of election in tampering with or violating secretary of ballot, how punishable.
4761 Fraudulent registry as a voter punishable and registration to be canceled.	4767 Forging or counterfeiting election returns, how punishable.
4762 Fraudulent voting without a right how punishable; Various acts of interference with ballots, etc., made punishable.	4768 Wilfully adding to or subtracting votes or allowing returns, how punishable.
4763 Fraudulent attempt to vote without right a misdemeanor.	4769 Wilfully aiding or abetting the commission of the above offences.
4764 Fraudulently aiding one disqualified to vote a misdemeanor	4770 Interfering with voter by force, threats, or corrupt means, how punishable.
4765 Fraudulent acts of judge of election, how punishable.	4771 Misdemeanor to violate any provision of election laws not otherwise punishable.

§ 4760. s 1. Every person charged with the performance of any duty under the provisions of any law of this Territory, or of Congress, relating to elections in this Territory, who wilfully neglects or refuses to perform it, or who,

Feb. 20, 1888.

Wilful neglect of duty under election laws punishable by fine and imprisonment.

in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is, unless a different punishment for such acts or omissions is prescribed by law, punishable by fine not exceeding one thousand dollars, or by imprisonment in the penitentiary not exceeding two years, or by both.

Fraudulent registry as a voter punishable.

§ 4761. s 2. Every person who wilfully causes, procures, or allows himself to be registered in any precinct, or city register list in any county, knowing himself not to be entitled to such registration; and every person who wilfully causes, procures, advises, encourages or assists any other person to be registered in any precinct or city register list in any county, knowing or believing such person not to be entitled to such registration, is punishable by fine not exceeding one thousand dollars, or by imprisonment in the penitentiary not exceeding one year, or by both. In all cases where, on the trial of a person charged with any offence under the provisions of this section, it appears in evidence that the accused stands registered in any such precinct or city register list in such county, without being duly qualified and entitled to such registration the court upon conviction must order such registration to be canceled.

Registration to be canceled.

Fraudulent voting without right how punishable.

§ 4762. s 3. Every person not entitled to vote who fraudulently votes, and every person who votes more than once, at any one election, or knowingly hands in two or more tickets folded together, or changes any ballot after the same has been deposited in the ballot box, or adds or attempts to add, any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted; or adds to or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots, while the same are being counted or canvassed or at any other time, or fraudulently carries away or destroys, or attempts to carry away or destroy, any poll list or ballots, or ballot box, or wilfully detains, mutilates or destroys any election returns, or in any manner so interferes with the officers holding such election, or conducting such canvass, or with the voters lawfully exercising their rights of voting at such election, as to prevent such election or canvass from being fairly held or lawfully conducted, is guilty of felony and shall be punished by a fine not

Various acts of interference with ballots, etc., made punishable.

exceeding one thousand dollars or by imprisonment in the penitentiary for a term not exceeding two years or by both.

§ 4763. s 4. Every person not entitled to vote who fraudulently attempts to vote, or who, being entitled to vote, attempts to vote more than once at any election, is guilty of a misdemeanor.

Fraudulent attempt to vote without right, a misdemeanor.

§ 4764. s 5. Every person who procures, aids, encourages, assists, counsels or advises another to give or offer his vote at any election knowing or believing that the person is not qualified and entitled to vote, is guilty of a misdemeanor.

Fraudulently aiding another known to be disqualified to vote, a misdemeanor.

§ 4765. s 6. Every officer or judge of election who aids in changing or destroying any poll list, or in fraudulently placing any ballots in the ballot box, or taking any therefrom, or adds or attempts to add any ballots to those legally polled at such election, either by fraudulently introducing the same into the ballot box, before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with, the ballots polled, any other ballots, while the same are being counted or canvassed, or at any other time, or allows another to do so when in his power to prevent it, or fraudulently carries away or destroys or knowingly allows another to fraudulently carry away or destroy any poll list, ballot box, or ballots lawfully polled, is punishable by imprisonment in the penitentiary for not less than two nor more than seven years.

Fraudulent acts of election, how punishable.

§ 4766. s 7. Every judge of an election who, after receiving the ballot of any qualified elector who is duly registered and found to be entitled to vote at such election, neglects to deposit such ballot in the ballot box, or who, previous to putting a ballot of an elector in the ballot box, attempts to find out any name on such ballot, or who opens or suffers the folded ballot of any elector, which has been handed in, to be opened or examined, previous to putting the same into the ballot box, or who makes or places any mark or device on any ballot with the view to ascertain the name of any person for whom the elector has voted, or who, without the consent of the elector discloses the name of any person, which such judge of election has fraudulently or illegally discovered to have been voted for by such elector, is punishable by a fine of not less than fifty nor more than five hundred dollars.

Fraudulent acts of judge of election in not depositing ballot or violating secrecy of ballot, how punishable.

§ 4767. s 8. Every person who forges or counterfeits returns of any election purporting to have been held at any

Forging or counterfeiting election returns, how punishable.

precinct or city in this Territory, where no election was in fact held, or wilfully substitutes forged or counterfeit returns of election in the place of the true returns for a precinct or city where any election was actually held, is punishable by imprisonment in the penitentiary for a term of not less than two nor more than ten years.

Wilfully adding to or subtracting votes, or altering returns, how punishable.

§ 4768. s 9. Every person who wilfully adds to or subtracts from the votes actually cast at an election, in any returns, or who alters such returns, is punishable by imprisonment in the penitentiary for not less than one nor more than five years.

Wilfully aiding or abetting the commission of above offences, how punishable.

§ 4769. s 10. Every person who wilfully aids or abets in the commission of any of the offences mentioned in the four preceding sections, is punishable by imprisonment in the county jail for the period of six months or in the penitentiary for a period not exceeding two years.

Interfering with votes by force, threats or corrupt means, how punishable.

§ 4770. s 11. Every person who, by force, threats, menaces, bribery or any corrupt means, either directly or indirectly, attempts to influence any elector in giving his vote or to deter him from giving the same, or who being a judge of any election, while acting as such induces or attempts to induce any elector, either by menace or reward or promise thereof, to vote differently from what such elector intended or desired to vote, is guilty of a misdemeanor.

Misdemeanor to violate any provisions of election laws, not otherwise punishable.

§ 4771. s 12. Every person who wilfully violates any of the provisions of the laws of this Territory relating to elections is, unless a different punishment for such violation is prescribed by law, guilty of a misdemeanor.

CRUELTY TO ANIMALS.

SECTION.	SECTION.
4772 Cruelty to animals in specified ways, how punishable.	4777 Society for prevention of cruelty to animals may nominate a deputy sheriff, when appointed his powers, responsibility for his acts.
4773 Misdemeanor to use or keep certain animals, etc., for purpose of fighting.	4778 Duty of sheriff, etc., to prosecute cases arising under these provisions.
4774 Other forms of cruelty to animals, how punishable.	4779 Duty of prosecuting attorney.
4775 Proceedings against persons accused of violating these provisions.	4780 Definitions; knowledge and acts of agents deemed those of principals, when.
4776 Search warrants may be issued, instruments of torture may be seized; how disposed of.	

§ 4772. s 1. Whoever overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or cruelly kills or causes or procures to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated or cruelly killed, any animal; and whoever having the charge or custody of any animal, either as owner or otherwise, inflicts unnecessary cruelty upon the same, or wilfully fails to provide the same with proper food, drink, shelter or protection from the weather, shall for every such offence, be punished by imprisonment in jail not exceeding three months, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment; *Provided*, That nothing in this section shall be construed to apply to animals running at large upon the range.

§ 4773. s 2. Any person who shall keep or use any bull, bear, dog, cock or other animal or fowl, or bird, for the purpose of fighting or baiting, or as a target, or to be shot at, either for amusement or as a test of skill in marksmanship; and any person who shall be a party to or be present as a spectator at any such fighting, baiting or shooting of any bear, bull, dog, cock, or other animal or fowl, or bird, and any person who shall rent any building, shed, room, yard, ground or premises for the purpose of fighting, baiting or shooting any animal, or fowl or bird, as aforesaid, or shall knowingly suffer or permit the use of any building, shed,

room, yard, ground or premises belonging to him or under his control, for either or any of the purposes aforesaid, shall, on conviction thereof, be adjudged guilty of a misdemeanor.

Other form of
cruelty to
animals, how
punishable.

§ 4774. s 3. Every owner, possessor or person having the charge or custody of any animal, who cruelly drives or works the same when unfit for labor, or who shall carry, or cause to be carried on or upon any vehicle or otherwise, any live animal having the feet or legs tied together, or in any other cruel or inhuman manner, or shall abandon any maimed, sick, infirm or disabled animal to die in any public place, or who shall carry, or cause to be carried, any live animal in or upon any vehicle, or otherwise, without providing suitable racks, cars, crates or cages, in which such animals may stand or lie down during transportation, and whilst awaiting slaughter, shall upon conviction thereof, be adjudged guilty of a misdemeanor and shall be punished for every such offence in the manner provided in section 1 of this act.

Proceedings
against per-
sons accused
of violating
these provi-
sions.

§ 4775. s 4. Persons found violating any of the provisions of this act, may be arrested and held without warrant in like manner as in the case of persons found breaking the peace, and it shall be the duty of the person making the arrest, to seize all animals and fowls found in the keeping or custody of the person arrested, and which are then being used, or held for use in violation of any of the provisions of this act, and the person making such seizure shall cause such animals or fowls to be at once delivered to a poundmaster of the town, village or city in which the same may be, and it shall be the duty of such poundmaster to receive such animals or fowls and to hold the same to be delivered to the owner or his agent upon the payment of all charges for the maintenance of said animals or fowls.

Search war-
rant may be
issued; instru-
ments of tor-
ture seized,
how same to
be disposed of.

§ 4776. s 5. When complaint is made, on oath or affirmation, to any magistrate authorized to issue warrants in criminal cases, that the complainant believes that any of the provisions of this act are being, or are about to be violated in any particular building or place, such magistrate, if satisfied that there is reasonable cause for such belief, shall issue and deliver a search warrant to any sheriff, constable or police officer, authorizing him to search such building or place and to arrest any person or persons engaged in violating any of the provisions of this act, as well as any person or persons there present, and aiding or abetting therein, and to bring such person or persons before some magistrate of competent

jurisdiction, to be dealt with according to law. Such officer shall at the same time, seize and bring to said magistrate every article or instrument found in said building or place especially designed or adapted to torture, or inflict wounds upon any animal, or to aid in the fighting or baiting of any animal; and unless within ten days after the trial of the person or persons so arrested, the owner of such article or instrument shall show, to the satisfaction of said magistrate, that the same is not designed or adapted to the wounding or torture of animals; or if so designed or adapted, is not intended to be used or employed for such purpose, the magistrate shall destroy such article or instrument.

§ 4777. s 6. Any society incorporated in this Territory for the purpose of preventing cruelty to animals may designate one or more persons in each county of the Territory to discover and prosecute all cases of the violation of the provisions of this act; and it shall be the duty of the sheriff of such county to appoint each person so designated a deputy sheriff, provided such person shall be of good moral character, and each person so appointed by the sheriff shall possess all the powers of a sheriff of the county in the enforcement of the provisions of this act. The sheriff, however, shall not be responsible for any acts of such person or persons, but the society, if incorporated, and if not, then the officers and members of the society, on the request of which such person was appointed, shall be liable in the degree of a principal for the acts of an agent.

Society for prevention of cruelty to animals, may nominate a deputy sheriff; when appointed, has powers, responsibility for his acts.

§ 4778. s 7. It shall also be the duty of all sheriffs, deputy sheriffs, constables and policemen to arrest and prosecute all persons of whose violation of the provisions of this act they may have knowledge or reasonable notice.

Duty of sheriff, etc., to prosecute cases arising under these provisions.

§ 4779. s 8. It shall be the duty of all prosecuting attorneys to represent and prosecute in behalf of the people within their respective counties all cases of offences arising under the provisions of this act.

Duty of prosecuting attorneys.

§ 4780. s 9. In this act the word "animal" or "animals" shall be held to include all brute creatures, and the words "owner" "person" and "whoever" shall be held to include incorporations as well as individuals, and the knowledge and acts of agents of and persons employed by corporations in regard to animals transported, owned, or employed by, or in custody of such corporations, shall be held to be the acts and knowledge of such corporations.

Definitions. Knowledge and acts of agents deemed those of principal, when.

PART THIRTEENTH.

CRIMINAL PROCEDURE.

AN ACT REGULATING THE MODE OF PROCEDURE IN CRIMINAL
CASES.

PRELIMINARY PROVISIONS.

SECTION.

- 4781 Enacting clause.
 4782 No person punishable but on legal conviction.
 4783 Public offences, how prosecuted.
 4784 Criminal action defined.
 4785 Parties to a criminal action.
 4786 The party prosecuted known as defendant.
 4787 Rights of defendant in a criminal action.

SECTION.

- 4788 Second prosecution for the same offence prohibited.
 4789 No person compelled to be a witness against himself in a criminal action or to be unnecessarily restrained.
 4790 No person to be convicted but upon verdict or judgment.

Enacting
clause.

§ 4781. s 1. Be it enacted, etc.: The mode of procedure in criminal cases in the courts in this Territory shall be as prescribed in this act.

No person
punishable
but on legal
conviction.

§ 4782. s 2. No person can be punished for a public offence, except upon a legal conviction in a court having legal jurisdiction thereof.

Public
offences how
prosecuted.

§ 4783. s 3. Every public offence must be prosecuted by indictment, except: Offences triable in justices' and police courts.

Criminal ac-
tion defined.

§ 4784. s 4. The proceeding by which a person charged with a public offence is accused and brought to trial and punishment, is known as a criminal action.

Parties to a
criminal ac-
tion.

§ 4785. s 5. A criminal action is prosecuted in the name of the people of the Territory of Utah, as a party, against the person charged with the offence.

§ 4786. s 6. The party prosecuted in a criminal action is designated in this Code as the defendant. Party prosecuted known as defendant.

§ 4787. s 7. In a criminal action the defendant is entitled: Feb. 22, 1878. Rights of defendant in a criminal action.

1. To a speedy and public trial.

2. To be allowed counsel as in civil actions, or to appear and defend in person or with counsel.

3. To produce witnesses on his behalf, and to be confronted with the witnesses against him, in the presence of the court, except that where the charge has been preliminarily examined before a committing magistrate and the testimony taken down by question and answer in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness: or where the testimony of a witness on the part of the people, who is unable to give security for his appearance, has been taken conditionally in the like manner in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness, the deposition of such witness may be read, upon its being satisfactorily shown to the court that he is dead or insane, or cannot, with due diligence, be found within the Territory.

§ 4788. s 8. No person can be subjected to a second prosecution for a public offence for which he has once been prosecuted and convicted or acquitted. Second prosecution for the same offence prohibited.

§ 4789. s 9. No person can be compelled, in a criminal action, to be a witness against himself; nor can a person charged with a public offence be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge. No person compelled to be a witness against himself in a criminal action, or to be unnecessarily restrained.

§ 4790. s 10. No person can be convicted of a public offence unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon judgment against him upon a demurrer in the case mentioned in section 199, or upon a judgment of a court, a jury having been waived in a criminal action not amounting to felony. No person to be convicted but upon a verdict or judgment. March 13, 1884.

TITLE I.

OF THE PREVENTION OF PUBLIC OFFENCES.

- CHAPTER I. Of lawful resistance.
 CHAPTER II. Of the intervention of the officers of justice.
 CHAPTER III. Security to keep the peace.
 CHAPTER IV. Police in cities and counties, and their attendance at exposed places.
 CHAPTER V. Suppression of riots.

CHAPTER I.

OF LAWFUL RESISTANCE.

SECTION.	SECTION.
4791 Lawful resistance, by whom made.	4792 By the party, and to what extent 4793 By other parties, in what cases.

March 5, 1888.
 Lawful resistance, by whom made

§ 4791. s 11. Lawful resistance to the commission of a public offence may be made:

1. By the party about to be injured.
2. By other parties.

By the party and to what extent.

§ 4792. s 12. Resistance sufficient to prevent the offence may be made by the party about to be injured:

1. To prevent an offence against his person, or his family, or some member thereof.
2. To prevent an illegal attempt by force to take or injure property in his lawful possession.

By other parties, in what cases

§ 4793. s 13. Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offence.

CHAPTER II.

OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

SECTION.

4794 Intervention of officers, in what cases.

SECTION.

4795 Persons acting in their aid justified.

§ 4794. s 14. Public offences may be prevented by the intervention of the officers of justice: Intervention of officers, in what cases.

1. By requiring security to keep the peace.
2. By forming a police in cities or counties and by requiring their attendance in exposed places.
3. By suppressing riots.

§ 4795. s 15. When the officers of justice are authorized to act in the prevention of public offences, other persons, who, by their command, act in their aid, are justified in so doing. Persons acting in aid of officers justified.

CHAPTER III.

SECURITY TO KEEP THE PEACE.

SECTION.

4796 Information of threatened offence.
 4797 Examination of complaint and witnesses.
 4798 Warrant of arrest.
 4799 Proceedings on charges being controverted.
 4800 Person complained of, when to be discharged.
 4801 Security to keep the peace, when required.
 4802 Effect of giving or refusing to give security.

SECTION.

4803 Person committed for not giving security, how discharged.
 4804 Undertaking to be filed in clerk's office.
 4805 Security, when required for assault committed in the presence of a court or magistrate.
 4806 Undertaking, when broken.
 4807 Undertaking, when and how to be prosecuted.
 4808 Evidence of breach.
 4809 Security for the peace not required, except in accordance with this Chapter.

§ 4796. s 16. An information may be laid before any of the magistrates mentioned in section 56, that a person has threatened to commit an offence against the person or property of another. Information of threatened offence.

Examination
of complain-
ant and wit-
nesses.

§ 4797. s 17. When the information is laid before such magistrate, he must examine, on oath, the informer and any witnesses he may produce and must take their depositions in writing, and cause them to be subscribed by the parties making them.

Warrant of
arrest.

§ 4798. s 18. If it appears from the depositions that there is just reason to fear the commission of the offence threatened by the person so informed against, the magistrate may issue a warrant, directed generally to the sheriff of the county, or any constable, marshal or policeman in the Territory, reciting the substance of the information, and commanding the officer forthwith to arrest the person informed of and bring him before the magistrate.

Proceedings
on charges be-
ing contro-
verted.

§ 4799. s 19. When the person informed against is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must be reduced to writing and subscribed by the witness.

Persons com-
plained of to
be discharged,
when.^o

§ 4800. s 20. If it appears that there is no just reason to fear the commission of the offence alleged to have been threatened, the person complained of must be discharged.

Security to
keep the
peace, when
required.

§ 4801. s 21. If, however, there is just reason to fear the commission of the offence, the person complained of may be required to enter into an undertaking in such sum, not exceeding three thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to keep the peace towards the people of this Territory and particularly towards the informer. The undertaking is valid and binding for six months and may, upon the renewal of the information, be extended for a longer period, or a new undertaking may be required.

Effect of giv-
ing or refus-
ing to give
security.

§ 4802. s 22. If the undertaking required by the last section is given, the party informed of must be discharged. If he does not give it, the magistrate must commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

Persons com-
mitted for not
giving secur-
ity, how dis-
charged.

§ 4803. s 23. If the person complained of is committed for not giving the undertaking required, he may be discharged by any magistrate upon giving the same.

Undertaking
to be filed in
clerk's office.

§ 4804. s 24. The undertaking must be filed by the magistrate in the office of the clerk of the county court.

§ 4805. s 25. A person who, in the presence of a court or magistrate, assaults or threatens to assault another, or to commit an offence against his person or property, or who contends with another with angry words, may be ordered by the court or magistrate to give security, as in this Chapter provided, and if he refuse to do so, may be committed as provided in section 22.

Security, when required for assault or threat in presence of a court or magistrate.

§ 4806. s 26. Upon the conviction of the person informed against of a breach of the peace, the undertaking is broken.

Undertaking when broken.

§ 4807. s 27. Upon the prosecuting attorney's producing evidence of such conviction to the court having jurisdiction, the court must order the undertaking to be prosecuted, and the prosecuting attorney must thereupon commence an action upon it in the name of the people of this Territory.

Undertaking when and how to be prosecuted.

§ 4808. s 28. In the action the offence stated in the record of conviction must be alleged as a breach of the undertaking, and such record is conclusive evidence of the breach.

Evidence of breach.

§ 4809. s 29. Security to keep the peace, or be of good behavior, cannot be required except as prescribed in this Chapter.

Security to keep the peace not required except in accordance with this Chapter.

CHAPTER IV.

POLICE IN CITIES AND COUNTIES, AND THEIR ATTENDANCE AT EXPOSED PLACES.

SECTION.

SECTION.

4810 Organization and regulation of the police.

4811 Force to preserve the peace at public meetings, when and how ordered.

§ 4810. s 30. The organization and regulation of the police, in the cities and counties of this Territory, is governed by special laws.

Organization and regulation of the police.

§ 4811. s 31. The mayor or other officer having the direction of the police of a city or county must order a force sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is reasonably apprehended.

Force to preserve the peace at public meetings, when and how ordered.

CHAPTER V.

SUPPRESSION OF RIOTS.

SECTION.	SECTION.
4812 Power of sheriff or other officer in overcoming resistance to process.	4814 When Governor to order out a military force to aid in executing process.
4813 The officer to certify to court the names of persons resisting, etc.	4815 Magistrates and officers to command rioters to disperse.
	4816 To arrest rioters if they do not disperse.

Power of sheriff or other officer in overcoming resistance to process.

§ 4812. s 32. When a sheriff or other public officer authorized to execute process, finds, or has reason to apprehend that resistance will be made to the execution of the process, he may command as many male inhabitants of his county as he may think proper to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the persons resisting, their aiders and abettors.

The officer to certify to the court the names of the persons resisting.

§ 4813. s 33. The officer must certify to the court from which the process issued the names of the persons resisting, and their aiders and abettors, to the end that they may be proceeded against for their contempt of court.

When Governor to order out a military force to aid in executing process.

§ 4814. s 34. If it appears to the Governor that the civil power of any county is not sufficient to enable the sheriff to execute process delivered to him, he must, upon the application of the sheriff of the county, order such portion as shall be sufficient, or the whole, if necessary, of the organized militia, to proceed to the assistance of the sheriff.

Magistrates and officers to command rioters to disperse.

§ 4815. s 35. When any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his deputies, the officials governing the precinct or city, or the justices of the peace and constables thereof, or any of them, must go among the persons assembled, or as near to them as he safely can, and command them, in the name of the people of the Territory, immediately to disperse.

To arrest rioters if they do not disperse.

§ 4816. s 36. If the persons assembled do not immediately disperse, such magistrates and officers must arrest them, and to that end may command the aid of all persons present or within the county.

TITLE II.

OF THE PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY
INDICTMENT, TO THE COMMITMENT, INCLUSIVE.

- CHAPTER I. Of the local jurisdiction of public offences.
 CHAPTER II. Of the time of commencing criminal actions.
 CHAPTER III. The information.
 CHAPTER IV. The warrant of arrest.
 CHAPTER V. Arrest, by whom and how made.
 CHAPTER VI. Retaking after an escape or rescue.
 CHAPTER VII. Examination of the case and discharge of the defendant or holding him to answer.

CHAPTER I.

OF THE LOCAL JURISDICTION OF PUBLIC OFFENCES.

- | SECTION. | SECTION. |
|---|--|
| 4817 Jurisdiction of offences. | 4822 Conviction or acquittal in another county or district a bar when jurisdiction is concurrent |
| 4818 Jurisdiction of an indictment for murder, etc., where injury was inflicted in one county and the party dies out of the county. | 4823 Jurisdiction of an offence on board a vessel. |
| 4819 Of an indictment against an accessory. | 4824 Of indictment for kidnapping, enticing away a child, or abduction. |
| 4820 Jurisdiction in cases of principals who are not present, etc., at commission of the principal offence. | 4825 When property is feloniously taken in one county and brought into another. |
| 4821 Conviction or acquittal in another State or Territory a bar when the jurisdiction is concurrent. | 4826 Jurisdiction of an indictment for escaping from prison. |
| | 4827 Jurisdiction of an indictment for stealing, etc., property out of this Territory and bringing it therein. |

§ 4817. s 37. Every person is liable to punishment, by the laws of this Territory, for public offences by him committed therein. When the commission of a public offence, commenced without the Territory, is consummated within its boundaries, the defendant is liable to punishment therefor in

Jurisdiction of offences.

this Territory, though he was out of the Territory at the time of the commission of the offence charged. If he consummated it in this Territory, through the intervention of an innocent or guilty agent, or any other means proceeding directly from himself, in such case the jurisdiction is in the county in which the offence is consummated. When an indictable public offence is committed in part in one judicial district, and in part in another, or the acts or effects thereof, constituting or requires it to the consummation of the offence, occur in two or more judicial districts, the jurisdiction is in either. When a public offence, of which magistrates have jurisdiction, is committed near the boundaries of two or more counties, the jurisdiction is in either.

Jurisdiction of an indictment for murder, etc., where injury was inflicted in one county and the party dies out of the county.

§ 4818. § 38. The jurisdiction of an indictment for murder or manslaughter, when the injury which caused the death was inflicted in one district and the party injured dies in another, or out of the Territory, is in the district where the injury was inflicted.

Of an indictment against an accessory.

§ 4819. § 39. In the case of an accessory in the commission of a public offence, the jurisdiction is in the district or county where the offence of the accessory was committed, notwithstanding the principal offence was committed in another county or district.

Jurisdiction in cases of principals who are not present, etc., at commission of the principal offence.

§ 4820. § 40. The jurisdiction of an indictment against a principal in the commission of a public offence, when such principal is not present at the commission of the principal offence, is in the same county or district it would be under this Code if he were so present and aiding and abetting therein.

Conviction or acquittal in another State a bar when the jurisdiction is concurrent.

§ 4821. § 41. When an act charged as a public offence is within the jurisdiction of a State or Territory, as well as of this Territory, a conviction or acquittal thereof in the former is a bar to the prosecution or indictment therefor in this Territory.

Conviction or acquittal in another county or district a bar when jurisdiction concurrent.

§ 4822. § 42. When an offence is within the jurisdiction of two or more districts or counties, a conviction or acquittal thereof in one county or district is a bar to a prosecution or indictment therefor in another.

Jurisdiction of an offence on board a vessel.

§ 4823. § 43. When an offence is committed in this Territory, on board a vessel navigating a river, bay, slough, canal or lake, or lying therein in the prosecution of her voyage, the jurisdiction is in any county or district through

which the vessel is navigated in the course of her voyage, or in the county or district where the voyage terminates.

§ 4824. s 44. The jurisdiction of an indictment:

Of indictment for kidnapping, enticing away a child, or abduction.

1. For forcibly and without lawful authority seizing and confining another, or inveigling or kidnapping him with intent, against his will, to cause him to be secretly confined or imprisoned in this Territory, or to be sent out of the Territory, or from one county to another; or,

2. For decoying, taking, or enticing away a child under the age of twelve years, with intent to detain and conceal it from its parent, guardian, or other person having lawful charge of the child; or,

3. For inveigling, enticing, or taking away any female of previous chaste character, for the purpose of prostitution; or,

4. For taking away any female under the age of eighteen years, from her father, mother, guardian, or other person having the legal charge of her person, without their consent, for the purpose of prostitution.

Is in the district in which the offence is committed, or out of which the person upon whom the offence was committed may, in the commission of the offence, have been brought, or in which an act was done by the defendant in instigating, procuring, promoting or aiding in the commission of the offence, or in abetting the parties concerned therein.

§ 4825. s 45. When property taken in one district or county by burglary, robbery, larceny, or embezzlement, has been brought into another, the jurisdiction of the offence is in either. But if at any time before the conviction of the defendant in the latter, he is indicted in the former, the sheriff of the latter county must, upon demand, deliver him to the sheriff of the former.

When property is feloniously taken in one county and brought into another.

§ 4826. s 46. The jurisdiction of an indictment for escaping from prison is in any county or district of the Territory.

Jurisdiction of an indictment for escaping from prison.

§ 4827. s 47. The jurisdiction of an indictment for stealing in any other Territory or State the property of another, or receiving it, knowing it to have been stolen, and bringing the same into this Territory, is in any county or district into or through which such stolen property has been brought.

Jurisdiction of an indictment for stealing, etc., property out of this Territory and bringing it therein.

CHAPTER II.

OF THE TIME OF COMMENCING CRIMINAL ACTIONS.

SECTION.

- 4828 No person shall be tried, etc., unless within the time set forth in this Chapter.
- 4829 Prosecution for murder may be commenced at any time.
- 4830 Limitation of four years in all other felonies.
- 4831 Limitation of three years in misdemeanors.

SECTION.

- 4832 Exception when defendant is out of the Territory.
- 4833 Indictment found, when presented and filed.
- 4834 Complaint for misdemeanor before justice of the peace or police court must be commenced within two years.
- 4835 Action or complaint commenced when complaint is filed.

No person to be tried, etc., unless within the time set forth in this Chapter.

§ 4828. s 48. No person shall be tried, convicted, or punished for any act or omission committed or omitted in this Territory, unless the indictment shall be found or the complaint shall be filed within the time set forth in this Chapter, after the commission or omission of the act charged.

Prosecution for murder may be commenced at any time.

§ 4829. s 49. There is no limitation of time within which a prosecution for murder may be commenced. It may be commenced at any time after the death of the person killed.

Limitation of four years in all other felonies.

§ 4830. s 50. An indictment for any other felony than murder must be found within four years after its commission.

Limitation of three years in misdemeanors.

§ 4831. s 51. An indictment for any misdemeanor must be found within three years after its commission.

Exception when defendant is out of the Territory.

§ 4832. s 52. If, when the offence is committed, the defendant, be out of the Territory, the indictment may be found within the term herein limited after his coming within the Territory, and no time during which the defendant is not an inhabitant of, or usually resident within the Territory, is part of the limitation.

Indictment found, when presented and filed.

§ 4833. s 53. An indictment is found, within the meaning of this Chapter, when it is presented by the grand jury in open court and there received and filed.

Complaint for misdemeanor before justice, etc., must be commenced in two years.

§ 4834. s 54. A complaint for a misdemeanor, of which justices of the peace and police courts have jurisdiction

tion, must be commenced within two years after the commission of the offence.

§ 4835. s 55. An action on a complaint is commenced, when a verified complaint is filed by the magistrate.

Action on complaint commenced when complaint is filed.

CHAPTER III.

THE INFORMATION.

SECTION.

4836 Who are magistrates.

§ 4836. s 56. The following persons are magistrates: Who are magistrates.

1. The district judge.
2. Justices of the peace.
3. Police magistrates in incorporated cities, such as mayors and aldermen.

CHAPTER IV.

THE WARRANT OF ARREST.

SECTION.

- 4837 Examination of the prosecutor and his witnesses upon the information.
- 4838 The deposition, what to contain.
- 4839 When warrant may issue.
- 4840 Form of warrant.
- 4841 Name or description of the defendant in the warrant, and statement of time of issuing it.
- 4842 Warrant, to whom directed and by whom executed.
- 4833 Defendant arrested for felony to be taken before magistrate issuing the warrant, etc.
- 4844 Defendant arrested for misdemeanor in another county to be admitted to bail.

SECTION.

- 4845 Proceedings on taking bail from the defendant.
- 4846 When bail is not given. When magistrate who issued the warrant cannot act.
- 4847 No delay in taking defendant before magistrate.
- 4848 Proceedings when defendant is taken before another magistrate.
- 4849 Proceedings for offences triable in other county.
- 4850 Duty of officer.
- 4851 Admission to bail. Proceedings when magistrate has jurisdiction of the offence.

§ 4837. s 57. When an information is laid before a magistrate of the commission of a public offence, triable within the county, he must examine on oath the informant or

Examination of the prosecutor and his witnesses upon the information.

prosecutor, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

The deposition, what to contain.

§ 4838. s 58. The deposition must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the offence and the guilt of the defendant.

When warrant may issue.

§ 4839. s 59. If the magistrate is satisfied therefrom that the offence complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he must issue a warrant of arrest.

Form of warrant.

§ 4840. s 60. A warrant of arrest is an order in writing in the name of the people, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

County of——

The people of the Territory of Utah to any sheriff, constable, marshal, or policeman of said Territory, or of the county of——: Information on oath having been this day laid before me, by A. B., that the crime of —— (designating it), has been committed, and accusing C. D. thereof, you are therefore commanded forthwith to arrest the above named C. D. and bring him before me at (naming the place), or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county. Dated at—— this——day of——, eighteen——.

Justice of the Peace.

When necessary, the magistrate may insert therein a clause to the effect that if the accused has fled from justice, that the peace officer pursue him into any other county of this Territory and there arrest him.

Name or description of the defendant in the warrant and statement of the time of issuing it.

§ 4841. s 61. The warrant must specify the name of the defendant, or, if it is unknown to the magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city or precinct where it is issued, and be signed by the magistrate, with his name of office.

Warrant to whom directed and by whom executed.

§ 4842. s 62. The warrant must be directed to and executed by a peace officer; and in an incorporated city may be served by any peace officer, either in the county where issued or in any other county of the Territory.

§ 4843. s 63. If the offence charged is a felony, the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided in section 66.

Defendant arrested for felony to be taken before magistrate issuing warrant etc.

§ 4844. s 64. If the offence charged is an indictable misdemeanor, and the defendant is arrested in another county, the officer must, upon being required by the defendant, take him before a magistrate in that county, who must admit the defendant to bail and take bail from him accordingly.

Defendant arrested for misdemeanor in another county to be admitted to bail.

§ 4845. s 65. On taking the bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant and undertaking to the clerk of the court at which the defendant is required to appear. If the offence charged be not an indictable misdemeanor, and the defendant be arrested in another county, the officer must, upon being required so to do by the defendant, take him before the most convenient magistrate in that or any adjoining county, who must admit the defendant to bail, and take bail for him accordingly, naming therein a time not exceeding twenty days, nor less than one day for each twenty miles from the place of taking it to the place of the magistrate's office who issued the warrant, for the defendant to appear. On taking the bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having the defendant in charge. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant and undertaking to the magistrate before whom the defendant is required to appear.

Proceedings on taking bail from the defendant.

§ 4846. s 66. If, on the admission of the defendant to bail, the bail is not forthwith given, the officer must take the defendant before the magistrate who issued the warrant, or, in case of his absence or inability to act, before the nearest or most accessible magistrate in the same county, and must, at the same time, deliver to the magistrate the warrant with his return thereon endorsed and subscribed by him.

When bail is not given. When magistrate who is sued warrant cannot act.

§ 4847. s 67. The defendant must in all cases be taken before the magistrate without unnecessary delay.

No delay in taking defendant before magistrate.

§ 4848. s 68. If the defendant is brought before a magistrate other than the one who issued the warrant, the de-

Proceedings
when defend-
ant is taken
before
another mag-
istrate.

positions on which the warrant was granted must be sent to that magistrate, or, if they cannot be procured, the prosecutor and his witnesses must be summoned to give their testimony anew.

Proceedings
for offences
triable in
another
county.
Feb. 22, 1878.

§ 4849. s 69. When an information is laid before a magistrate of the commission of a public offence triable in another county of the Territory, but showing that the defendant is in the county where the information is laid, the same proceedings must be had as prescribed in this Chapter, except that the warrant must require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offence is triable, and the depositions of the informant or prosecutor, and of the witnesses who may have been produced, must be delivered by the magistrate to the officer to whom the warrant is delivered.

Duty of officer.

§ 4850. s 70. The officer who executes the warrant must take the defendant before the nearest or most accessible magistrate of the county in which the offence is triable and must deliver to him the depositions and the warrant, with his return endorsed thereon, and the magistrate must then proceed in same manner as upon a warrant issued by himself.

Admission to
bail.
March 13, 1884.

§ 4851. s 71. If the offence charged in the warrant issued pursuant to section 69 is a misdemeanor, the officer must, upon being required by the defendant, take him before a magistrate of the county in which the warrant was issued, who, unless he have jurisdiction to try the defendant, must proceed as provided in Chapter VII. of this Title.

CHAPTER V.

ARREST, BY WHOM AND HOW MADE.

SECTION.

4852 Arrest defined. By whom made
 4853 Arrest, how made. What restraint allowed.
 4854 Arrest by peace officer.
 4855 Arrest by private person.
 4856 Magistrates may orally order arrest.
 4857 Persons making arrest may summon assistance.
 4858 When the arrest may be made.
 4859 Arrest, how made.
 4860 Warrant must be shown.
 4861 When force may be used and what amount.

SECTION.

4862 Doors and windows may be broken, when.
 4863 Same.
 4864 Weapons may be taken from persons arrested.
 4865 Duty of private person who has made an arrest.
 4866 Duty of officer arresting with warrant.
 4867 Persons arrested without a warrant to be taken before a magistrate; information to be filed.
 4868 Arrest by telegraph.
 4869 Same.

§ 4852. s 72. An arrest is taking a person into custody in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.

Arrest defined.
By whom made.

§ 4853. s 73. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of an officer. The defendant must not be subjected to any more restraint than is necessary for his arrest and detention.

Arrest, how made. What restraint allowed.

§ 4854. s 74. A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person:

Arrest by peace officer.

1. For a public offence committed or attempted in his presence.

2. When a person arrested has committed a felony, although not in his presence.

3. When a felony has in fact been committed and he has reasonable cause for believing the person arrested to have committed it.

4. On a charge, made upon a reasonable cause, of the commission of a felony by the party arrested.

5. At night, when there is reasonable cause to believe that he has committed a felony.

§ 4855. s 75. A private person may arrest another:

Arrest by private person.

1. For a public offence committed or attempted in his presence.

2. When the person arrested has committed a felony, although not in his presence.

March 13, 1884.

3. When a felony has been in fact committed and he has reasonable cause for believing the person arrested to have committed it.

Conductor or other person in charge of railroad trains may make an arrest without warrant.

4. A conductor or other person having charge of any railway train in this Territory shall have power to arrest without a warrant any person disturbing the peace of a traveler or committing any offence against the laws of the Territory while traveling with or upon the train of which he is in charge.

Magistrates may orally order arrest.

§ 4856. s 76. A magistrate may orally order a peace officer or private person to arrest any one committing or attempting to commit a public offence in the presence of such magistrate.

Persons making an arrest may summon assistance.

§ 4857. s 77. Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

When the arrest may be made.
Feb. 22, 1878.

§ 4858. s 78. If the offence charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is a misdemeanor, the arrest cannot be made at night, unless upon the direction of the magistrate, indorsed upon the warrant, or unless the offence is committed in the presence of the person making the arrest.

Arrest, how made.

§ 4859. s 79. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission of or an attempt to commit an offence, or is pursued immediately after its commission, or after an escape.

Warrant must be shown.

§ 4860. s 80. If the person making the arrest is acting under the authority of a warrant, he must show the warrant, if required.

When force may be used and what amount.

§ 4861. s 81. When the arrest is being made by an officer under the authority of a warrant, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary means to effect the arrest.

§ 4862. s 82. To make an arrest, a private person, if the offence is a felony, and in all cases, a peace officer, may

break open the door or window of the building in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired.

Doors and windows may be broken, when.
March 13, 1884.

§ 4863. s 83. Any person who has lawfully entered a house for the purpose of making an arrest, may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself, and an officer may do the same, when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest, and is detained therein.

§ 4864. s 84. Any person making an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken.

Weapons may be taken from persons arrested.

§ 4865. s 85. A private person who has arrested another for the commission of a public offence must, without unnecessary delay, take the person arrested before a magistrate or deliver him to a peace officer.

Duty of private person who has made an arrest.
Feb. 22, 1878.

§ 4866. s 86. An officer making an arrest in obedience to a warrant, must proceed with the person arrested as commanded by the warrant or as provided by law.

Duty of officer arresting with warrant

§ 4867. s 87. When an arrest is made without a warrant by a peace officer or private person, the person arrested must, without unnecessary delay, be taken to the nearest or most accessible magistrate in the county in which the arrest is made, and an information, stating the charge against the person, must be laid before such magistrate. A conductor or other person who has made an arrest as provided in subdivision 4 of section 75 of this act, shall without unnecessary delay, take the person so arrested before any accessible magistrate, and an information, stating the charge against the person, must be laid before such magistrate, and the magistrate before whom such charge is made, if the offence is triable by him, shall have full jurisdiction over said offence and the defendant, to try and determine said offence. If he have not jurisdiction to try the defendant for the offence charged, he must proceed as provided in Chapter VII. of this Title.

Person arrested without a warrant to be taken before a magistrate. Information to be filed.
March 13, 1884.

§ 4868. s 88. Any magistrate may, by an endorsement under his hand upon a warrant of arrest, authorize the service thereof by telegraph, and thereafter a telegraphic copy of

Arrest by telegraph.

such warrant may be sent by telegraph to one or more peace officers, and such copy is as effectual in the hands of any officer, and he must proceed in the same manner under it as though he held an original warrant issued by the magistrate making the endorsement.

Same.

§ 4869. s 89. Every officer causing telegraphic copies of warrants to be sent, must certify as correct and file in the telegraphic office from which such copies are sent, a copy of the warrant and endorsement thereon, and must return the original with a statement of his action thereunder.

CHAPTER VI.

RETAKING AFTER AN ESCAPE OR RESCUE.

SECTION.

4870 May be at any time or in any place in the Territory.

SECTION.

4871 May break open door or window if admittance is refused.

May be at any time or in any place in the Territory.

§ 4870. s 90. If a person arrested escape or is rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him at any time and in any place within the Territory.

May break open door or window if admittance is refused.

§ 4871. s 91. To retake the person escaping or rescued, the person pursuing may break open an outer or inner door or window of a dwelling house or other building, if, after notice of his intention, he is refused admittance.

CHAPTER VII.

EXAMINATION OF THE CASE AND DISCHARGE OF THE DEFENDANT, OR
HOLDING HIM TO ANSWER.

SECTION.	SECTION.
4872 Magistrate to inform defendant of the charge and of his right to have counsel.	4884 Depositions, by whom and how kept.
4873 Time to send and sending for counsel.	4885 Defendant, when and how discharged.
4874 Examination, when to proceed.	4886 When and how to be committed.
4875 When to be completed. Postponement.	4887 When offence is not bailable, order for commitment.
4876 On postponement defendant to be committed or discharged on bail.	4888 When offence is bailable, certificate of bail being taken.
4877 The commitment, form of.	4889 Order for bail on commitment.
4878 Depositions to be read on examination and subpoenas issued.	4890 Commitment, how made and to whom delivered.
4879 Examination of witnesses to be in presence of defendant, etc.	4891 Commitment, form of.
4880 Examination of defendant's witnesses.	4892 Undertaking may be required of witness to appear.
4881 Exclusion and separation of witnesses.	4893 For the appearance of witnesses, when and how required.
4882 Who are entitled to be present at the examination.	4894 Witness refusing to give security for his appearance to be committed.
4883 Testimony, how taken and authenticated.	4895 Witness unable to give security may be conditionally examined.
	4896 Magistrate to return depositions, etc., without delay, to the court.

§ 4872. s 92. When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offence, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings. Magistrate to inform defendant of the charge and of his right to have counsel.

§ 4873. s 93. He must also allow the defendant a reasonable time to send for counsel, and postpone the examination for that purpose, and must, upon the request of the defendant, require a peace officer to take a message to any counsel in the precinct or the city the defendant may name. The officer must, without delay and without fee, perform that duty. Time to send and sending for counsel.

§ 4874. s 94. If the defendant requires the aid of counsel, the magistrate must, immediately after the appearance of counsel, or if, after waiting a reasonable time therefor, none appears, proceed to examine the case. Examination when to proceed.

When to be completed.
Postponement.

§ 4875. s 95. The examination must be completed at one session, unless the magistrate, for good cause shown by affidavit, postpone it. The postponement cannot be for more than four days at each time, nor more than twelve days in all, unless by consent or on motion of the defendant.

On postponement, defendant to be committed or discharged on bail.

§ 4876. s 96. If a postponement is had, the magistrate must commit the defendant for examination, admit him to bail, or discharge him from custody upon the deposit of money as provided in this act, as security for his appearance at the time to which the examination is postponed.

The commitment, form of. Depositions to be read on examination and subpoenas issued.

§ 4877. s 97. The commitment for examination is made by an indorsement, signed by the magistrate on the warrant of arrest, to the following effect: "The within named A. B. having been brought before me under this warrant, is committed for examination to the sheriff of——." If the sheriff is not present, the defendant may be committed to the custody of any peace officer.

Examination of witnesses to be in presence of defendant, etc.

§ 4878. s 98. At the examination the magistrate must first read to the defendant the depositions of the witnesses examined on taking the information. He must also issue subpoenas, subscribed by him, for witnesses within the Territory, required either by the prosecution or the defense.

Examination of defendant's witnesses.

§ 4879. s 99. The witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf.

§ 4880. s 100. When the examination of witnesses on the part of the people is closed, any witness the defendant may produce may be sworn and examined.

Exclusion and separation of witnesses.
Feb. 22, 1878.

§ 4881. s 101. While a witness is under examination, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

Who are entitled to be present at the examination.

§ 4882. s 102. The magistrate must also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, the attorney-general, the prosecuting attorney of the county, or the district attorney of the United States, the defendant and his counsel, and the officer having the defendant in custody.

Testimony, how taken and authenticated.

§ 4883. s 103. The testimony of each witness in cases of homicide must be reduced to writing, as a deposition, by the magistrate, or under his direction; and in other cases

upon the demand of the prosecuting officer. The magistrate before whom the examination is had, may, in his discretion, order the testimony and proceedings to be taken down in short hand, in all examinations herein mentioned, and for that purpose he may appoint a short hand reporter. The deposition or testimony of the witness must be authenticated in the following form:

1. It must state the name of the witness, his place of residence, and his business or profession. March 13, 1884.

2. It must contain the questions put to the witness, and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to what he declares is the truth; except in cases where the testimony is taken down in short hand, the answer or answers of the witness need not be read to him.

3. If a question put be objected to on either side and overruled, or the witness declines answering it, that fact with the ground on which the question was overruled or the answer declined, must be stated.

4. The deposition must be signed by the witness, or if he refuse to sign it, his reason for refusing must be stated in writing as he gives it, except in cases where the deposition is taken down in short hand, it need not be signed by the witness.

5. It must be signed and certified by the magistrate when reduced to writing by him, or under his direction, and when taken down in short hand, the transcript of the reporter appointed as aforesaid, when written out in long hand writing, and certified as being a correct statement of such testimony and proceedings in the case shall be *prima facie* a correct statement of such testimony and proceedings. The reporter shall, within ten days after the close of such examination, (if the defendant be held to answer the charge), transcribe into long hand writing his said short hand notes, and certify and file the same with the clerk of the district court of the district embracing the county in which the defendant was examined, and shall in all cases file his original notes with said clerk. The reporter's fees shall be paid out of the treasury of the county.

§ 4884. s 104. The magistrate or his clerk must keep the depositions taken on the information or on the examination, until they are returned to the proper court; and must

Depositions,
by whom and
how kept.

not permit them to be examined or copied by any person except a judge of a court having jurisdiction of the offence, or authorized to issue writs of habeas corpus, the attorney general, district attorney, or other prosecuting attorney, and the defendant and his counsel.

Defendant,
when and how
discharged.

§ 4885. s 105. If, after hearing the proofs, it appears that either no public offence has been committed, or that there is not sufficient cause to believe the defendant guilty of a public offence, the magistrate must order the defendant to be discharged, by an indorsement on the depositions and statement, signed by him, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offence within mentioned, I order him to be discharged."

When and
how to be
committed.

§ 4886. s 106. If, however, it appears from the examination that a public offence has been committed, and there is sufficient cause to believe the defendant guilty thereof, the magistrate must indorse on the depositions an order, signed by him to the following effect: "It appearing to me that the offence in the within depositions mentioned (or any offence, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer to the same."

When offence
is not
bailable, or
order for com-
mitment.

§ 4887. s 107. If the offence is not bailable, the following words must be added to the indorsement: "And he is hereby committed to the sheriff of the county of——."

When offence
is bailable,
certificate of
bail being
taken.

§ 4888. s 108. If the offence is bailable, and bail is taken by the magistrate, the following words must be added to the indorsement: "And I have admitted him to bail on the undertaking hereto annexed."

Order for
bail on com-
mitment.

§ 4889. s 109. If the offence is bailable and the defendant is admitted to bail, but bail has not been taken, the following words must be added to the order indorsed on the deposition: "And that he is admitted to bail in the sum of——dollars, and is committed to the sheriff of the county of——, until he gives such bail, or is legally discharged."

Commitment
how made out
and to whom
delivered.

§ 4890. s 110. If the magistrate ordered the defendant to be committed, he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or, if that officer is not present, to a peace officer, who must deliver the de

fendant into the proper custody, together with the commitment.

§ 4891. s 111. The commitment must be to the following effect: Commitment, form of.

County of——: (as the case may be.)

The people of the Territory of Utah to the sheriff of the county of——: An order having been this day made by me that A. B. be held to answer upon a charge of (stating briefly the nature of the offence, and giving as near as may be the time when, and the place where, the same was committed), you are commanded to receive him into your custody and detain him until he is legally discharged. Dated this—— day of—— eighteen——.

§ 4892. s 112. On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the people a written undertaking, to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum of two hundred dollars. Undertaking may be required of witnesses to appear.

§ 4893. s 113. When the magistrate or a judge of the court in which the action is pending is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify unless security is required, he may order the witness to enter into a written undertaking, with sureties, in such sum as he may deem proper, for his appearance as specified in the preceding section. Security for the appearance of witnesses, when and how required.

§ 4894. s 114. If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the magistrate must commit him to prison until he complies or is legally discharged. Witness refusing to give security for his appearance to be committed.

§ 4895. s 115. When, however, it satisfactorily appears, by examination on oath of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people; such examination must be by question and answer, and conducted in the same manner as the examination before a committing magistrate is required by this act to be conducted, and the witness thereupon be discharged; but this section does not apply to the prosecutor or to an accomplice in the commission of the offence charged. Witness unable to give security may be conditionally examined.

Feb. 22, 1878.

Magistrate to
return deposi-
tions, etc.,
without delay
to the court.

§ 4896. s 116. When a magistrate has discharged a defendant, or has held him to answer, he must return, without delay, to the clerk of the court at which the defendant is required to appear, the warrant, if any, the depositions, and all undertakings of bail, or for the appearance of witnesses taken by him.

TITLE III.

OF PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT.

CHAPTER I. Preliminary provisions.

CHAPTER II. Powers and duties of a grand jury.

CHAPTER I.

PRELIMINARY PROVISIONS.

SECTION.

4897 Public offences triable in the district courts to be prosecuted by indictment.

4898 Who may challenge the panel or an individual juror.

4899 Cause of challenge to a panel.

4900 Cause of challenge to an individual grand juror.

4901 Manner of taking and trying challenges.

4902 Decision upon challenges.

4903 Effect of allowing a challenge to a panel.

SECTION.

4904 Effect of allowing a challenge to an individual juror.

4905 Objection to jury can only be taken by challenge.

4906 Appointment of a foreman.

4907 Oath of foreman.

4908 Oath of other grand jurors.

4909 Grand jury to be charged by the court.

4910 Retirement of the grand jury. Discharge of.

March 13, 1884.

Public
offences
triable in the
district courts
to be prose-
cuted by in-
dictment.

§ 4897. s 117. All public offences triable in the district courts, except cases appealed from justices' courts, must be prosecuted by indictment.

A grand jury must consist of fifteen eligible male citizens of the United States, selected, summoned and impaneled, as provided by law, twelve of whom may constitute a quorum to do business.

Every male citizen of the United States is an eligible juror who is .

Qualifications
of jurors.
Feb. 22, 1878.

1. Over the age of twenty-one years; and,
2. Who can read and write the English language; and,
3. Who resides in and has resided in the judicial district in which he is called upon to serve six months next preceding the time he is selected by the probate judge and clerk of the district court to serve as a juror as provided by law; and,
4. Who is a taxpayer in this Territory; and,
5. Who is of reputed sound mind and discretion and who is not so disabled in body as to be unable to serve; and,
6. Who has not been convicted of a felony; and,
7. Who is not an officer or soldier of the United States or a person subject to their military control, unless his home and place of residence was in this Territory at the time of engaging in such service, or who has not served on grand or petit juries within the term of two years next preceding.

§ 4898. s 118. The people, or a person held to answer a charge for a public offence, may challenge the panel of a grand jury or an individual juror.

§ 4899. s 119. A challenge to the panel may be interposed for one or more of the following causes only:

Who may
challenge the
panel or an
individual
juror.

1. That the requisite number of ballots was not drawn from the jury box.
2. The notice of the drawing of the grand jury was not given in the manner provided by law.
3. That the drawing was not had in presence of the officers designated by law.

§ 4900. s 120. A challenge to an individual grand juror may be interposed for one or more of the following causes only:

Cause of
challenge to a
panel

1. That he is not an eligible juror as provided by law.
2. That he is prosecutor upon a charge against the defendant.
3. That he is a witness on the part of the prosecution, and has been served with process or bond by an undertaking as such.

4. That he has formed or expressed an unqualified opinion or belief that the defendant is guilty or not guilty of the offence charged; but a hypothetical opinion, founded on hearsay or information supposed to be true, unaccompanied

Feb. 22, 1878.

with malice or ill-will, shall not disqualify a juror or be a cause of challenge.

Manner of
taking and try-
ing chal-
lenges.

§ 4901. s 121. The challenges mentioned in the last three sections may be oral or in writing and must be tried by the court.

Decision upon
challenges.

§ 4902. s 122. The court must allow or disallow the challenge and the clerk must enter its decisions upon the minutes.

Effect of
allowing a
challenge to
a panel.

§ 4903. s 123. If a challenge to the panel is allowed, the grand jury are prohibited from inquiring into the charge against the defendant by whom the challenge was interposed. If, notwithstanding, they do so, and find an indictment against him, the court must direct it to be set aside.

Effect of
allowing a
challenge to
an individual
juror.

§ 4904. s 124. If a challenge to an individual grand juror is allowed, he cannot be present to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon. The grand jury must inform the court of a violation of this section, and it is punishable by the court as a contempt.

Objections to
jury can only
be taken by
challenge.

§ 4905. s 125. A person held to answer a charge for a public offence can take advantage of any objection to the panel or to an individual grand juror in no other mode than by challenge.

Appointment
of a foreman.

§ 4906. s 126. From the persons summoned to serve as grand jurors and appearing, the court must appoint a foreman. The court must also appoint a foreman when the person already appointed is excused or discharged before the grand jury is dismissed.

Oath of fore-
man.

§ 4907. s 127. The following oath must be administered to the foreman of the grand jury: "You, as foreman of the grand jury, do solemnly swear that you will diligently inquire into and true indictments make of all public offences against the people of this Territory, committed or triable within this district of which you shall have legal evidence. That you will indict no person through malice, hatred or ill will, nor leave any unindicted through fear, favor or affection, or of any reward or the promise or hope thereof; but in all your indictments you will state the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding, so help you God."

§ 4908. s 128. The following oath must be immediately thereupon administered to the other grand jurors present: "The

same oath which your foreman has now taken before you on his part, you and each of you will well and truly observe on your part, so help you God.”

§ 4909. s 129. The grand jury being impaneled and sworn, must be charged by the court. In doing so, the court must give them such information as is required by law as to their duties, and as to any charges for public offences returned to the court or likely to come before the grand jury.

§ 4910. s 130. The grand jury must then retire to a private room and inquire into the offences cognizable by them. On the completion of the business before them they must be discharged by the court; but whether the business is completed or not, they are discharged by the final adjournment of the court.

CHAPTER II.

POWERS AND DUTIES OF A GRAND JURY.

SECTION.	SECTION.
4911 Powers and duty of grand jury.	4918 Must inquire into cases of persons imprisoned, etc.
4912 Indictment defined.	4919 Entitled to free access to public prisons.
4913 Foreman may administer oaths.	4920 When and from whom they may ask advice and who may be present during their sessions.
4914 Evidence receivable before the grand jury.	4921 Secrets of grand jury to be kept, etc.
4915 Grand jury not bound to hear evidence for the defendant but may order explanatory evidence, etc.	4922 Grand juror not to be questioned for his conduct, except, etc.
4916 Degree of evidence to warrant indictment.	
4917 Grand juror having knowledge of public offence must declare same.	

§ 4911. s 131. The grand jury must inquire into all public offences committed or triable within the judicial district, and present them to the court by indictment.

§ 4912. s 132. An indictment is an accusation in writing, presented by the grand jury to a competent court, charging a person with a public offence.

§ 4913. s 133. The foreman may administer an oath to any witness appearing before the grand jury.

Evidence receivable before the grand jury.

§ 4914. s 134. In the investigation of a charge for the purpose of an indictment, the grand jury can receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence, or the deposition of a witness in the cases mentioned in the third subdivision of section seven. The grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence.

Grand jury not bound to hear evidence for the defendant but may order explanatory evidence, etc.

§ 4915. s 135. The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the prosecuting attorney to issue process for the witnesses.

Degree of evidence to warrant indictment.

§ 4916. s 136. The grand jury ought to find an indictment when all the evidence before them, taken together, if unexplained or uncontradicted, would, in their judgment, warrant a conviction by a trial jury.

Grand juror having knowledge of public offence must declare same.

§ 4917. s 137. If a member of a grand jury knows, or has reason to believe, that a public offence, triable within the district, has been committed, he must declare the same to his fellow jurors, who must thereupon investigate the same.

Must inquire into cases of persons imprisoned, etc

§ 4918. s 138. The grand jury must inquire into the case of every person imprisoned in the jails of the district on a criminal charge and not indicted; into the conditions and management of the public prisons within the district; and into the wilful and corrupt misconduct in office of public officers of every description within the district.

Entitled to free access to public prisons.

§ 4919. s 139. They are also entitled to free access, at all reasonable times, to the public prisons.

When and from whom they may ask advice and who may be present during their session.

§ 4920. s 140. The grand jury may, at all reasonable times, come into court and ask its advice on questions of law, but the judge must not be present in the jury room during the sessions of the grand jury. The attorney or attorneys for the people may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by them, and may interrogate witnesses before them whenever they or he think it necessary; but no other person is permitted to be present during the sessions of the grand jury except the members, interpreters and witnesses actually under examination, and no person must be permitted

to be present during the expression of their opinion or giving their votes upon any matter before them.

§ 4921. s 141. Every member of the grand jury must keep secret whatever he himself or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them; but may, however, be required by any court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person upon a charge against such person for perjury in giving his testimony, or upon trial therefor.

Secrets of grand jury to be kept except, etc.

§ 4922. s 142. A grand juror cannot be questioned for anything he may say, or any vote he may give in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow jurors.

Grand juror not to be questioned for his conduct, except, etc.

TITLE IV.

OF THE INDICTMENT.

CHAPTER I. Finding and presentment of the indictment.

CHAPTER II. Rules of pleading and form of indictment.

CHAPTER I.

FINDING AND PRESENTMENT OF THE INDICTMENT.

SECTION.	SECTION.
4923 Indictment must be found by twelve jurors, endorsed, etc.	4926 Indictment, how presented and filed.
4924 If not found, depositions, etc., must be returned to court, etc.	4927 Proceedings when defendant is not in custody.
4925 Names of witnesses inserted at foot of indictment.	

§ 4923. s 143. An indictment cannot be found without the concurrence of at least twelve grand jurors. When so

Indictment must be found by twelve jurors, indorsed, etc.

If not found depositions, etc., must be returned to the court, etc.

found it must be indorsed "A true bill," and the indorsement must be signed by the foreman of the grand jury.

§ 4924. s 144. If twelve grand jurors do not concur in finding an indictment against a defendant who has been held to answer, the depositions and statement, if any, transmitted to them must be returned to the court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed. Such dismissal of the charge does not prevent its re-submission to a grand jury at the next ensuing term, by order of the court, but it must not, after such ensuing term be re-submitted.

Names of witnesses inserted at foot of indictment.

§ 4925. s 145. When an indictment is found, the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, must be inserted at the foot of the indictment or endorsed thereon, before it is presented to the Court.

Indictment, how presented and filed.

§ 4926. s 146. An indictment, when found by the grand jury, must be presented by their foreman in their presence to the court, and must be filed with the clerk.

Proceedings when defendant is not in custody.

§ 4927. s 147. When an indictment is found against a defendant not in custody, the same proceedings must be had as are prescribed in sections 173 to 178 inclusive, against a defendant who fails to appear for arraignment.

CHAPTER II.

RULES OF PLEADING AND FORM OF THE INDICTMENT.

SECTION.	SECTION.
4928 Forms and rules of pleading.	4941 Private statutes, how pleaded.
4929 First pleading by the people is the indictment.	4942 Pleading in indictment for libel.
4930 Indictment, what to contain.	4943 Pleading in an indictment for forgery when instrument has been destroyed or withheld by defendant.
4931 Indictment must be direct and certain.	4944 Pleading in an indictment for perjury or subornation of perjury.
4932 When defendant is indicted by fictitious name, etc.	4945 Pleading in an indictment for larceny or embezzlement.
4933 Indictment must charge but one offence and in one form only, except, etc. <i>Proviso.</i>	4946 Pleading in an indictment for exhibiting, etc., lewd and obscene books, etc.
4934 Statement as to time when offence was committed.	4947 Indictment against several, one or more may be acquitted.
4935 Statement as to person injured or intended to be.	4948 Distinction between accessory before the fact and principal abrogated. Principals, how indicted.
4936 Construction of words used in an indictment.	4949 Accessory may be indicted and tried though principal has not been.
4937 Words used in a statute need not be strictly pursued.	
4938 Indictment is sufficient, when.	
4939 Presumptions of law, etc., need not be stated.	
4940 Judgments, etc., how pleaded.	

§ 4928. s 148. All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by this act. Forms and rules of pleadings.

§ 4929. s 149. The first pleading on the part of the people is the indictment. First pleading by the people is the indictment.

§ 4930. s 150. The indictment must contain:

1. The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties. Indictment, what to contain.

2. A clear and concise statement of the acts or omissions constituting the offence, with such particulars of the time, place, person and property as will enable the defendant to understand distinctly the character of the offence complained of and answer the indictment. It must be substantially in the following form:

Territory of Utah.

In the——judicial district court.

The people of the Territory of Utah, against A. B.

A. B. is accused by the grand jury of this court, by this

indictment, of the crime of (giving its legal appellation such as murder, arson, or the like, or designating it as felony or misdemeanor), committed as follows: The said A. B., on the——day of——A. D. eighteen——, at the county of—— (here set forth the act or omission charged as an offence.)

Indictment must be direct and certain.

§ 4931. s 151. It must be direct and certain, as it regards:

1. The party charged.
2. The offence charged.
3. The particular circumstances of the offence.

When defendant is indicted by fictitious name.

§ 4932. s 152. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

Indictment must charge but one offence, but offences may be set forth in different forms, etc.

March 13, 1884.

§ 4933. s 153. The indictment must charge but one offence, but the same offence may be set forth in different forms under different counts, and, when the offence may be committed by the use of different means, the means may be alleged in the alternative in the same count.

Statement as to time when offence was committed.

§ 4934. s 154. The precise time at which the offence was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offence.

Statement as to person injured or intended to be.

§ 4935. s 155. When an offence involves the commission of, or an attempt to commit, a private injury and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

Construction of words used in an indictment.

§ 4936. s 156. The words used in an indictment are construed in their usual acceptance in common language, except such words and phrases as are defined by law, which are construed according to their legal meaning.

Words used in a statute need not be strictly pursued.

§ 4937. s 157. Words used in a statute to define a public offence need not be strictly pursued in the indictment; but other words conveying the same meaning may be used.

Indictment is sufficient, when.

§ 4938. s 158. The indictment is sufficient if it can be understood therefrom:

1. That it is entitled in a court having authority to receive it, though the name of the court be not stated.

2. That it was found by a grand jury of the district in which the court was held.

3. That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with a statement that his true name is to the jury unknown.

4. That the offence committed was within the jurisdiction of the court and is triable therein.

5. That the offence was committed at some time prior to the time of finding the indictment.

6. That the act or omission charged as the offence is clearly and distinctly set forth, without repetition, and in such a manner as to enable the court to understand what is intended; and,

To pronounce judgment upon a conviction according to the right of the case.

§ 4939. s 159. Neither presumptions of law nor matters of which judicial notice is taken, need be stated in an indictment. Presumption of law, etc., need not be stated.

§ 4940. s 160. In pleading a judgment or other determination of, or proceeding before, a court or officer of special jurisdiction, it is not necessary to state the facts constituting jurisdiction; but the judgment or determination may be stated as given or made, or the proceedings had. The facts constituting jurisdiction, however, must be established on the trial. Judgments, etc., how pleaded. Feb. 22, 1878.

§ 4941. s 161. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof. Private statutes how pleaded.

§ 4942. s 162. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded; but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial. Pleading in indictment for libel.

§ 4943. s 163. When an instrument which is the subject of an indictment for forgery has been destroyed or withheld by the act or the procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial. Pleading in an indictment for forgery when instrument has been destroyed or withheld by defendant.

Pleading in an indictment for perjury or subornation of perjury.

§ 4944. s 164. In an indictment for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offence was committed, and in what court and before whom the oath alleged to be false was taken, and that the court, or the person before whom it was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned: but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

March 13, 1884.
Pleading in an indictment for larceny, embezzlement, etc.

§ 4945. s 165. In an indictment for the larceny or embezzlement of money, bank notes, certificates of stock or valuable securities or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock or valuable securities, without specifying the coin, number, denomination or kind thereof.

Pleading in an indictment for selling, exhibiting, etc., lewd and obscene books, etc.
Feb. 22, 1878.

§ 4946. s 166. An indictment for exhibiting, publishing, passing, selling or offering to sell, or having in possession with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper or writing, need not set forth any portion of the language used, or figures shown upon such book, pamphlet, picture, print, card, paper or writing; but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

Indictment against several, one or more may be acquitted.
Distinction between accessory before the fact and principal abrogated.
March 13, 1884.

§ 4947. s 167. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

§ 4948. s 168. The distinction between an accessory before the fact and principal, and between principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offence or aid and abet in its commission, though not present, shall hereafter be prosecuted, tried and punished as principals and no other facts need be alleged in any indictment against such an accessory than are required in an indictment against his principal.

Principals how indicted.

Accessory may be indicted and tried though principal has not been.

§ 4949. s 169. An accessory to the commission of a felony may be indicted, tried and punished, though the principal may be neither indicted nor tried.

TITLE V.

OF PLEADINGS AND PROCEEDINGS AFTER INDICTMENT AND
BEFORE THE COMMENCEMENT OF THE TRIAL.

- CHAPTER I. Of the arraignment of the defendant.
 CHAPTER II. Setting aside the indictment.
 CHAPTER III. Demurrer.
 CHAPTER IV. Plea.
 CHAPTER V. Removal of the action before trial.
 CHAPTER VI. The mode of trial.
 CHAPTER VII. Formation of the trial jury and the calendar of issues for trials.
 CHAPTER VIII. Postponement of the trial.

CHAPTER I.

OF THE ARRAIGNMENT OF THE DEFENDANT.

SECTION.	SECTION.
4950 Defendant must be arraigned in court where indictment was found.	4959 Ordering defendant into custody or increasing bail when indictment is for felony.
4951 Arraignment, when defendant must be present at.	4960 Defendant, if present when order is made, to be committed; if not bench warrant to issue.
4952 If in custody to be brought before the court.	4961 Defendant on his arraignment, to be informed of his right to counsel. When court to assign counsel.
4953 If discharged on bail, etc., bench warrant to issue.	4962 Arraignment, how made.
4954 Bench warrant, by whom and how issued.	4963 Proceedings on indictment when defendant is not indicted by his true name.
4955 Bench warrant, form of.	4964 Time allowed, and how defendant may answer on arraignment
4956 Directions in the bench warrant if the offence is bailable.	
4957 Bench warrant, how served.	
4958 Proceedings on giving bail in another county.	

§ 4950. s 170. When the indictment is filed, the defendant must be arraigned thereon before the court in which it is found.

Defendant must be arraigned in the court where indictment was found.

§ 4951. s 171. If the indictment is for a felony, the defendant must be personally present; but if for a misdemeanor, he may appear upon the arraignment by counsel.

Arraignment when defendant must be present at.

If in custody,
to be brought
before the
court.

§ 4952. s 172. When his personal appearance is necessary, if he is in custody, the court may direct and the officer in whose custody he is must bring him before it to be arraigned.

If discharged
on bail, etc.,
bench war-
rant to issue.

§ 4953. s 173. If the defendant has been discharged on bail, or has deposited money instead thereof and do not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

Bench warrant
by whom and
how issued.

§ 4954. s 174. The clerk, on the application of the prosecuting attorney, may, at any time after the order, whether the court is sitting or not, issue a bench warrant to one or more counties.

Bench war-
rant, form of.

§ 4955. s 175. The bench warrant upon the indictment must, if the offence is a felony, be substantially in the following form:

County of ———.

The people of the Territory of Utah to any sheriff, constable, marshal or policeman in this Territory:

An indictment having been found on the——day of——, A. D., eighteen——, in the district court of the——district, charging C. D. with the crime of——, (designating it generally); you are therefore commanded forthwith to arrest the above named C. D. and bring him before that court (naming it), to answer said indictment; or if the court have adjourned for the term, that you deliver him into the custody of the sheriff of the county of——, or the United States marshal.

Given under my hand with the seal of said court affixed, this——day of——, A. D.——.

By order of said court.

[Seal.]

E. F., Clerk.

Directions in
the bench war-
rant if the of-
fence is bail-
able.

§ 4956. s 176. The defendant, when arrested under a warrant for an offence not bailable, must be held in custody by the proper officer of the court in which the indictment is found, unless admitted to bail after an examination upon a writ of habeas corpus; but if the offence is bailable, there must be added to the body of the bench warrant a direction to the following effect: "Or, if he requires it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer to the

indictment;" and the court, upon directing it to issue, must fix the amount of bail, and an endorsement must be made thereon and signed by the clerk, to the following effect: "The defendant is to be admitted to bail in the sum of—— dollars."

§ 4957, s 177. The bench warrant may be served in any district in the same manner as a warrant of arrest.

Bench war-
rant how
served.

§ 4958, s 178. If the defendant is brought before a magistrate of another district for the purpose of giving bail, the magistrate must proceed in respect thereto in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings must be had thereon.

Proceedings
on giving bail
in another
county

§ 4959, s 179. When the indictment is for a felony, and the defendant before the finding thereof, has given bail for his appearance to answer the charge, the court to which the indictment is presented may order the defendant to be committed to actual custody, unless he gives bail in an increased amount, to be specified in the order.

Ordering de-
fendant into
custody or in-
creasing bail
when indict-
ment is for fel-
ony.

§ 4960, s 180. If the defendant is present when the order is made, he must be forthwith committed. If he is not present, a bench warrant must be issued and proceeded upon in the manner provided in this Chapter.

Defendant if
present when
order is made,
to be commit-
ted; if not,
bench warrant
to issue.

§ 4961, s 181. If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him.

Defendant, on
his arraignment
to be in-
formed of his
right to coun-
sel.

When court to
assign coun-
sel.

§ 4962, s 182. The arraignment must be made by the court, or by the clerk or prosecuting attorney, under its direction, and consists in reading the indictment to the defendant and delivering to him a copy thereon, including the list of witnesses, and asking him whether he pleads guilty or not guilty to the indictment.

Arraignment,
how made.

§ 4963, s 183. When the defendant is arraigned, he must be informed that if the name by which he is indicted is not his true name, he must then declare his true name, or be proceeded against by the name in the indictment. If he give no other name the court may proceed accordingly; but if he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the ar-

Proceedings
on indictment
when defend-
ant is not in-
dicted by his
true name.

arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

Time allowed,
and how de-
fendant may
answer on ar-
raignment.

§ 4964. s 184. If, on the arraignment, the defendant requires it, he must be allowed a reasonable time, not less than one day, to answer the indictment. He may, in answer to the arraignment, move to set aside, demur or plead to the indictment.

CHAPTER II.

SETTING ASIDE THE INDICTMENT.

SECTION.

4965 Indictment, when to be set aside
on motion.
4966 Defendant waives objections
unless he makes the motion.

SECTION.

4967 If denied or granted, what pro-
ceedings to be had.
4968 Effect of order for re-submission
4969 Order to set aside an indictment
no bar to another prosecution.

Indictment,
when to be set
aside on
motion.

§ 4965. s 185. The indictment must be set aside by the court in which the defendant is arraigned, upon his motion in either of the following cases:

1. Where it is not found, indorsed, and presented as prescribed in this act.

2. When the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment, or indorsed thereon.

3. When a person is permitted to be present during the session of the grand jury, and when the charge embraced in the indictment is under consideration, except the attorney or attorneys for the people and the witness and interpreter.

4. When the defendant had not been held to answer before the finding of the indictment, on any ground which would have been good for challenge, either to the panel or to any individual grand juror.

§ 4966. s 186. If the motion to set aside the indict-

ment is not made, the defendant is precluded from afterwards taking the objections mentioned in the last section.

Defendant waives objections unless he makes the motion.
Motion, when heard.

§ 4967. s 187. The motion must be heard at the time it is made, unless for cause the court postpones the hearing to another time. If the motion is denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto. If the motion is granted, the court must order that the defendant, if in custody, be discharged therefrom; or, if admitted to bail, that his bail be exonerated; or, if he has deposited money instead of bail, that the same be refunded to him, unless it directs that the case be re-submitted to the same or another grand jury.

If denied or granted, what proceedings to be had.

§ 4968. s 188. If the court directs the case to be re-submitted, the defendant, if already in custody, must so remain unless he is admitted to bail, or, if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment; and unless a new indictment is found before the next grand jury of the district is discharged, the court must, on the discharge of such grand jury, make the order prescribed by the preceding section.

Effect of order for re-submission.

§ 4969. s 189. An order to set aside an indictment, as provided in this Chapter, is no bar to a future prosecution for the same offence.

Order to set aside an indictment no bar to another prosecution.

CHAPTER III.

DEMURRER.

SECTION.	SECTION.
4970 Pleading on part of defendant.	4977 If re-submission not ordered, defendant to be discharged, etc.
4971 Demurrer or plea, when put in.	4978 Proceedings, if submission ordered.
4972 Grounds of demurrer.	4979 Proceedings if demurrer is disallowed.
4973 Demurrer, how put in and its form.	4980 When objections forming ground of demurrer must or may be taken.
4974 When heard.	
4975 Judgment on demurrer.	
4976 If allowed, bar to another prosecution, when.	

§ 4970. s 190. The only pleading on the part of the defendant is either a demurrer or a plea.

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Pleading on part of defendant

Demurrer on
plea, when put
in.

§ 4971. s 191. Both the demurrer and plea must be put in, in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

Grounds of
demurrer.

§ 4972. s 192. The defendant may demur to the indictment when it appears upon the face thereof either:

1. That the grand jury by which it was found had no legal authority to inquire into the offence charged, by reason of its not being within the legal jurisdiction of the court.

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2. That it does not substantially conform to the requirements of sections 150 and 151.

3. That more than one offence is charged in the indictment, except as provided in section 153.

4. That the facts stated do not constitute a public offence.

5. That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the offence charged, or other legal bar to the prosecution.

Demurrer,
how put in and
its form.

§ 4973. s 193. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment, or it must be disregarded.

When heard.

§ 4974. s 194. Upon the demurrer being filed, the argument upon the objections presented thereby must be heard, either immediately or at such time as the court may appoint.

Judgment on
demurrer.
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§ 4975. s 195. Upon considering the demurrer, the court must give judgment, either allowing or disallowing it, and an order to that effect must be entered upon the minutes.

If allowed, bar
to another
prosecution,
when

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§ 4976. s 196. If the demurrer is allowed, the judgment is final, upon the indictment demurred to, and is a bar to another prosecution for the same offence, unless the court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, directs the case to be re-submitted to the same or to another grand jury.

If re-submis-
sion not order-
ed, defendant
discharged,
etc.

§ 4977. s 197. If the court does not direct the case to be re-submitted, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money must be refunded to him.

Proceedings if
submission
ordered.

§ 4978. s 198. If the court directs that the case be re-submitted, the same proceedings must be had thereon as are prescribed in sections 187 and 188.

§ 4979, s 199. If the demurrer is disallowed, the court must permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may direct. If he does not plead, judgment may be pronounced against him.

§ 4980, s 200. When the objections mentioned in section 192 appear upon the face of the indictment, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offence, may be taken at the trial, under the plea of not guilty, or after the trial, in arrest of judgment.

CHAPTER IV.

PLEA.

SECTION.	SECTION.
4981 The different kinds of pleas.	4986 What is not a former acquittal.
4982 Plea, how put in and its form.	4987 What is a former acquittal.
4983 Plea of guilty, how put in and when it may be withdrawn.	4988 Conviction or acquittal of an indictment for a higher offence, effect of.
4984 Plea of not guilty, what it puts in issue.	4989 Defendant refusing to answer, plea of not guilty to be entered.
4985 What may be put in evidence under a plea of not guilty.	

§ 4981, s 201. There are three [four] kinds of pleas to an indictment. A plea of:

1. Guilty.
2. Not guilty.
3. A former judgment of conviction or acquittal of the offence charged, which may be pleaded either with or without the plea of not guilty.

4. Once in jeopardy.

§ 4982, s 202. Every plea must be oral and entered upon the minutes of the court substantially in the following form:

1. If the defendant plead guilty. "The defendant pleads that he is guilty of the offence charged in this indictment."

2. If he plead not guilty, "The defendant pleads that he is not guilty of the offence charged in this indictment."

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3. If he plead a former conviction or acquittal, "The defendant pleads that he has already been convicted (or acquitted) of the offence charged in this indictment, by the judgment of the court of——(naming it), rendered at——(naming the place), on the——day of——."

4. If he plead once in jeopardy, "The defendant pleads that he has been once in jeopardy for the offence charged (specifying the time, place and court)."

Plea of guilty, how put in, and when it may be withdrawn.

§ 4983, s 203. A plea of guilty can be put in by the defendant himself only in open court, unless upon indictment against a corporation, in which case it may be put in by counsel. The court may at any time before judgment, upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted.

Plea of not guilty, what it puts in issue.

§ 4984, s 204. The plea of not guilty puts in issue every material allegation of the indictment.

What may be given in evidence under a plea of not guilty.

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§ 4985, s 205. All matters of fact tending to establish a defense other than that specified in the third subdivision of section 201 may be given in evidence under the plea of not guilty.

What is not a former acquittal.

§ 4986, s 206. If the defendant was formerly acquitted on the ground of variance between the indictment and the proof, or the indictment was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offence, without a judgment of acquittal, it is not an acquittal of the same offence.

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What is a former acquittal.

§ 4987, s 207. Whenever the defendant is acquitted on the merits, he is acquitted of the same offence, notwithstanding any defect in form or substance in the indictment on which the trial was had.

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Conviction or acquittal on an indictment for a higher offence, effect of.

§ 4988, s 208. When the defendant is convicted or acquitted or been once placed in jeopardy upon an indictment, the conviction, acquittal or jeopardy is a bar to another indictment for the offence charged in the former, or for an attempt to commit the same, or for an offence necessarily included therein, of which he might have been convicted under that indictment.

Defendant refusing to answer, plea of not guilty to be entered.

§ 4989, s 209. If the defendant refuses to answer the indictment by demurrer or plea, a plea of not guilty must be entered.

CHAPTER V.

REMOVAL OF THE ACTION BEFORE TRIAL.

SECTION.

- 4990 When action may be removed.
 4991 Application for removal, how made.
 4992 Application, when to be granted.
 4993 Order of removal.

SECTION.

- 4994 Proceedings on removal if defendant is in custody.
 4995 When original paper must be transmitted.

§ 4980. s 210. A criminal action, prosecuted by indictment, may be removed from the court in which it is pending on the application of the defendant, on the ground that a fair and impartial trial cannot be had in the district where the indictment is pending. When an action may be removed.

§ 4991. s 211. The application must be made in open court, and in writing, verified by the affidavit of the defendant, a copy of which must be served on the prosecuting attorney at least one day before the application is made. Whenever the affidavit shows that the defendant cannot safely appear in person to make the application, because the popular excitement against him is so great as to endanger his personal safety, and such statement is sustained by other testimony, the application may be made by counsel, and heard and determined in the absence of the defendant, though he is indicted for felony, and has not at the time of such application been arrested, or given bail, or been arraigned, or pleaded, or demurred to the indictment. Application for removal, how made.

§ 4992. s 212. If the court is satisfied that the representation of the defendant is true, an order must be made for the removal of the action to the proper court of a district free from a like objection. Application when to be granted.

§ 4993. s 213. The order of removal must be entered upon the minutes and the clerk must immediately make out and transmit to the court to which the action is removed, a certified copy of the order of removal, record, pleadings and proceedings in the action, including the undertakings for the appearance of the defendant and of the witnesses. Order for removal.

§ 4994. s 214. If the defendant is in custody, the order must direct his removal and he must be forthwith removed

by the proper officer of the district where he is imprisoned to the custody of the proper officer of the district to which the action is removed.

When original papers must be transmitted.

§ 4995. s 215. The court to which the action is removed must proceed to trial and judgment therein as if the action had been commenced in such court. If it is necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed must at any time, upon application of the prosecuting attorney or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained.

CHAPTER VI.

THE MODE OF TRIAL.

SECTION.

4996 Issue of fact defined.

4997 How tried.

SECTION.

4998 When presence of defendant is necessary on the trial.

Issue of fact defined.

§ 4996. s 216. An issue of fact arises:

1. Upon a plea of not guilty; or,

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2. Upon a plea of a former conviction or acquittal of the same offence.

3. Upon a plea of once in jeopardy.

How tried.

§ 4997. s 217. Issues of fact must be tried by jury unless a trial by jury be waived in criminal cases not amounting to felony by the consent of both parties expressed in open court and entered in its minutes.

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When presence of defendant is necessary.

§ 4998. s 218. If the indictment is for a felony, the defendant must be personally present at the trial; but if for misdemeanor, the trial may be had in the absence of the defendant; if, however, his presence is necessary, for the purpose of identification, the court may, upon application of the prosecuting attorney, by an order or warrant, require the personal attendance of the defendant at the trial.

CHAPTER VII.

FORMATION OF THE TRIAL JURY.

SECTION.

4999 Formation of the trial jury.

5000 Clerk to prepare a calendar.

5001 Order of disposing of issue on the calendar.

SECTION.

5002 Defendant entitled to two days to prepare for trial.

§ 4999. s 219. Trial juries for criminal actions are formed in the same manner as trial juries in civil actions.

Formation of trial jury.

§ 5000. s 220. The clerk must prepare a calendar of all criminal actions pending in the court, enumerating them according to the date of the filing of the indictment, specifying opposite the title of each action, whether it is for a felony or a misdemeanor, and whether the defendant is in custody or on bail.

Clerk to prepare a calendar.

§ 5001. s 221. The issues on the calendar must be disposed of in the following order, unless for good cause the court shall direct an action to be tried out of its order:

Order of disposing of issues on the calendar.

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1. Indictments for felony, when the defendant is in custody.

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2. Actions for misdemeanor, when the defendant is in custody.

3. Indictments for felony, when the defendant is on bail.

4. Actions for misdemeanor, when the defendant is on bail.

§ 5002. s 222. After his plea the defendant is entitled to at least two days to prepare for trial.

Defendant entitled to two days to prepare for trial.

CHAPTER VIII.

POSTPONEMENT OF THE TRIAL.

SECTION.

5003 Postponement, when and how ordered.

§ 5003. s 223. When an action is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by affidavit, direct the trial to be postponed to another day of the same or of the next term.

Postponement when and how ordered.

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TITLE VI.

OF PROCEEDINGS AFTER THE COMMENCEMENT OF THE TRIAL
AND BEFORE JUDGMENT.

- CHAPTER I. Challenging the jury.
 CHAPTER II. The trial.
 CHAPTER III. Conduct of the jury after the cause is submitted to them.
 CHAPTER IV. The verdict.
 CHAPTER V. Bills of exception.
 CHAPTER VI. New trials.
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CHAPTER I.

CHALLENGING THE JURY.

- | SECTION. | SECTION. |
|---|---|
| 5004 Definition and division of challenges. | 5018 Peremptory challenges, number of. |
| 5005 Defendants cannot sever in challenges. | 5019 Challenge for cause, defined, kinds of. |
| 5006 Panel defined. | 5020 General cause of challenge. |
| 5007 Challenge to the panel defined. | 5021 Particular causes of challenges. |
| 5008 Upon what founded | 5022 Challenge for implied bias, ground of. |
| 5009 When and how taken. | 5023 Exemption not a ground of challenge. |
| 5010 If the sufficiency of the challenge be denied, adverse party may except. Exception, how taken. | 5024 Cause of challenge, how stated. |
| 5011 If exception be overruled, court may allow denial, etc | 5025 Exceptions to challenge and denial thereof. |
| 5012 Denial of challenge, how made, and trial thereof. Whom may be examined on trial of challenge. | 5026 Challenge, how tried. |
| 5013 If challenge allowed, jury to be discharged, if disallowed, to be impaneled | 5027 Juror challenged may be examined as a witness. |
| 5014 Defendant to be informed of his right to challenge individual jurors. | 5028 Other witnesses. Rules of evidence on trial of challenge. |
| 5015 Kinds of challenges to individual jurors. | 5029 Challenge for implied bias, how determined. |
| 5016 Challenges, when taken. | 5030 Challenges, first by the defendant and then by the people. |
| 5017 Peremptory challenge, what and how taken. | 5031 Challenges for cause, order of taking. |
| | 5032 Peremptory challenges may be taken after challenges for cause are exhausted. |

§ 5004. s 224. A challenge is an objection made to the trial jurors and is of two kinds: Definition and division of challenges.

1. To the panel.
2. To an individual juror.

§ 5005. s 225. When several defendants are tried together they cannot sever their challenges, but must join therein. Defendants cannot sever in challenges

§ 5006. s 226. The panel is a list of jurors returned to serve at a particular court, or for the trial of a particular action. Panel defined.

§ 5007. s 227. A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party. Challenge to the panel defined.

§ 5008. s 228. A challenge to the panel can be founded only on a material departure from the forms prescribed in respect to the drawing and return of the jury in civil actions, or on the intentional omission of the proper officer to summon one or more of the jurors drawn. Upon what founded.

§ 5009. s 229. A challenge to the panel must be taken before a juror is sworn and must be in writing and must plainly and distinctly state the facts constituting the ground of challenge. When and how taken.

§ 5010. s 230. If the sufficiency of the facts alleged as ground of the challenge is denied, the adverse party may except [to] the challenge. The exception need not be in writing, but must be entered on the minutes of the court, and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true. If sufficiency of the challenge be denied, adverse party may except. Exception, how taken.

§ 5011. s 231. If, on the exception, the court finds the challenge sufficient, it may, if justice requires it, permit the party excepting to withdraw his exception and to deny the facts alleged in the challenge. If the exception is allowed, the court may, in like manner, permit an amendment to the challenge. If exception be overruled, court may allow denial, etc.

§ 5012. s 232. If the challenge is denied, the denial may be oral and must be entered on the minutes of the court and the court must proceed to try the question of fact, and upon such trial the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other person, may be examined to prove or disprove the facts alleged as the ground of the challenge. Feb. 22, 1878. Denial of challenge, how made, and trial thereof. Who may be examined on trial of challenge.

It challenge allowed, jury to be charged; if disallowed, to be impaneled.

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§ 5013. s 233. If, either upon exception to the challenge, or a denial of the facts, the challenge is allowed, the court must discharge the jury, so far as the trial in question is concerned. If it is disallowed, the court must direct the jury to be impaneled.

Defendant to be informed of his right to challenge individual jurors.

§ 5014. s 234. Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intends to challenge an individual juror, he must do so when the juror appears and before he is sworn.

Kind of challenge to individual jurors.

§ 5015. s 235. A challenge to an individual juror is either:

1. Peremptory; or,
2. For cause.

Challenges, when taken.

§ 5016. s 236. It must be taken when the juror appears and before he is sworn to try the cause; but the court may for cause permit it to be taken after the juror is sworn and before the jury is completed.

Peremptory challenge, what and how taken.

§ 5017. s 237. A peremptory challenge can be taken by either party and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court must exclude him.

Peremptory challenges, number of.
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§ 5018. s 238. If the offence charged is punishable with death, the prosecution and the defence shall each be allowed fifteen peremptory challenges. On a trial for any other offence, the prosecution and the defence shall each be allowed three peremptory challenges.

Challenge for cause defined.
Kinds of.
Feb. 22, 1878.

§ 5019. s 239. A challenge for cause may be taken by either party. It is an objection to a particular juror and is either:

1. General—That the juror is disqualified from serving in any case; or,
2. Particular—That he is disqualified from serving in the action on trial.

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General causes of challenge.

§ 5020. s 240. General causes of challenge are:

1. A conviction for felony.
2. A want of any of the qualifications prescribed by law to render a person a competent juror.

3. Unsoundness of mind, or such defect in the faculties of mind or organs of the body as render him incapable of performing the duties of a juror.

§ 5021. s 241. A particular cause of challenge is:

1. For such a bias, as when the existence of the facts is ascertained, in judgment of law, disqualifies the juror, and which is known in this act as implied bias. Particular causes of challenge.

2. For the existence of a state of mind on the part of the juror which leads to a just inference, in reference to the case that he will not act with entire impartiality, which is known in this act as actual bias.

§ 5022. s 242. A challenge for implied bias may be taken for all or any of the following causes, and for no other. Challenge for implied bias, ground of.

1. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or to the defendant.

2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or in his employment on wages.

3. Being the party adverse to the defendant in a civil action, or having complaint against or being accused by him in a criminal prosecution.

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment.

5. Having served on a trial jury which has tried another person for the offence charged. March 13, 1884.

6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it. March 13, 1884.

7. Having served as a juror in a civil action brought against the defendant for the act charged as an offence. Feb. 22, 1878.

8. Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offence charged.

9. If the offence charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty, in which case he must neither be permitted nor compelled to serve as a juror.

Exemption
not ground for
a challenge.

§ 5023. s 243. An exemption from service on a jury is not a cause of challenge but the privilege of the person exempted.

Causes of chal-
lenge, how
stated.

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§ 5024. s 244. In a challenge for implied bias, one or more of the causes stated in section 242 must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of section 241 must be alleged; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety; *Provided*, It appear to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters submitted to him. The challenge may be oral, but must be entered in the minutes of the court or of the phonographic reporter.

Exceptions to
challenge, and
denial thereof.
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§ 5025. s 245. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon as are prescribed in section 230, except that if the exception be allowed the juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

Challenge how
tried.

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§ 5026. s 246. If the facts are denied, the challenge must be tried.

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Juror chal-
lenged may be
examined as a
witness.

§ 5027. s 249. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry.

Other wit-
nesses.
Rules of
evidence on
trial of chal-
lenge.

§ 5028. s 250. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of evidence on the trial of the challenge.

Challenge for
implied bias,
how deter-
mined.

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§ 5029. s 251. The court must allow or disallow the challenge, and its decision must be entered in the minutes of the court.

Challenge,
first by the de-
fendant, and
then by the
people.

§ 5030. s 254. All challenges to an individual juror, except peremptory, must be taken, first by the defendant, and then by the people, and each party must exhaust all his challenges before the other begins.

Challenge for
cause, order
of taking.

§ 5031. s 255. The challenges of either party for cause need not all be taken at once, but they must be taken sepa-

rately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. To the panel.
2. To an individual juror, for a general disqualification.
3. To an individual juror, for an implied bias.
4. To an individual juror, for an actual bias.

§ 5032. s 256. If all challenges on both sides are disallowed, either party, first the people and then the defendant, may take a peremptory challenge, unless the parties' peremptory challenges are exhausted.

Peremptory challenges may be taken after challenges for cause are exhausted.

CHAPTER II.

THE TRIAL.

SECTION.	SECTION.
5033 Order of trial.	5050 Proceedings when evidence shows higher offence than that charged.
5034 When order of trial may be departed from.	5051 Court may discharge jury when it has not jurisdiction, etc.
5035 Number of counsel who may argue the case to the jury.	5052 Proceedings when jury discharged for want of jurisdiction of offence committed out of the Territory.
5036 Defendant presumed innocent until contrary is proven. Reasonable doubt.	5053 View of premises, when ordered, and how conducted.
5037 When reasonable doubt as to degree, he can only be convicted of lowest.	5054 Jurors may be permitted to separate during trial. If kept together, oath of officer.
5038 Separate trials.	5055 Jury, at each adjournment, must be admonished, etc.
5039 Discharging one of several defendants, before verdict, to be a witness.	5056 Proceedings when juror becomes unable to perform his duties.
5040 Same.	5057 Court to decide all questions of law arising during trial.
5041 Effect of such discharge.	5058 On trial for libel jury to determine law and fact.
5042 The rules of evidence in civil actions applicable to criminal cases except, etc.	5059 In all other cases court to decide questions of law.
5043 Evidence on trial for conspiracy.	5060 Charging the jury.
5044 When the burden of proof shifts in trial for murder.	5061 Jury may decide in court or retire in custody of officer. Oath of officer.
5045 Evidence upon trial for forging bank bills, etc. Experts.	5062 When defendant on bail appears for trial he may be committed.
5046 Evidence upon trial for abortion and seduction.	5063 If prosecuting attorney fails to attend, court must appoint substitute.
5047 Evidence on trial for selling, etc. lottery tickets.	
5048 Evidence of false pretenses.	
5049 Conviction cannot be had on uncorroborated testimony of accomplice.	

§ 5033. s 257. The jury having been impaneled and sworn, the trial must proceed in the following order:

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Order of trial.

1. If the indictment is for felony, the clerk must read it and state the plea of the defendant to the jury. In all other cases this formality may be dispensed with.

2. The prosecuting attorney or other counsel for the people must open the cause and offer the evidence in support of the indictment.

3. The defendant or his counsel may then open the defence, and offer his evidence in support thereof.

4. The parties may then respectively offer rebutting testimony only, unless the court for good reason, in furtherance of justice, permit them to offer evidence upon their original case.

5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides without argument, the prosecuting attorney or other counsel for the people must open, and the prosecuting attorney may conclude the argument.

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6. The judge may then charge the jury, and must do so on any points pertinent to the issue if requested by either party; and he may state the testimony and declare the law; and in each case he shall inform the jury that they are the sole judges of the credibility of the witnesses, of the weight of the evidence, and of the facts. If the charge be not given in writing, it must be taken down by the phonographic reporter.

When order of trial may be departed from.

§ 5034. s 258. When the state of the pleadings requires it, or in any other case, for good reasons, and in the sound discretion of the court, the order of argument prescribed in the last section may be departed from.

Number of counsel who may argue the case of the jury.

§ 5035. s 259. If the indictment is for an offence punishable with death, two counsel on each side may argue the cause to the jury. If it is for any other offence, the court may, in its discretion, restrict the argument to one counsel on each side.

Defendant presumed innocent until the contrary is proven Reasonable doubt.

§ 5036. s 260. A defendant in a criminal action is presumed to be innocent, until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

When reasonable doubt as to degree, he can only be convicted of lowest.

§ 5037. s 261. When it appears that the defendant has committed a public offence, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

§ 5038. s 262. When two or more defendants are Separate trials jointly indicted for a felony, any defendant requiring it must be tried separately; in other cases the defendant jointly indicted may be tried separately or jointly, in the discretion of the court.

§ 5039. s 263. When two or more persons are included Discharging one of several defendants, before verdict, to be a witness. in the same indictment, the court may, at any time before the defendants have gone into their defense, on the application of the prosecuting attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the people.

§ 5040. s 264. When two or more persons are included same. in the same indictment, and the court is of the opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged from the indictment before the evidence is closed, that he may be a witness for his co-defendant.

§ 5041. s 265. The order mentioned in the last two sections is an acquittal of the defendant discharged, and is a bar Effect of such discharge. to another prosecution for the same offence.

§ 5042. s 266. The rules of evidence Rules of evidence in civil, applicable to criminal cases, except, etc. in civil actions are applicable also to criminal actions, except as otherwise provided in this act.

§ 5043. s 267. Upon a trial for conspiracy, in a case Evidence on trial for conspiracy. where an overt act is necessary to constitute the offence, the defendant cannot be convicted unless one or more overt act [acts] are expressly alleged in the indictment, nor unless one of the acts alleged is proved; but other overt acts not alleged in the indictment may be given in evidence.

§ 5044. s 268. Upon a trial for murder, the commission of the homicide by the defendant being proved, the burden of proving circumstances of mitigation, or that justify or excuse it, devolves upon him, unless the proof on the part of the prosecutions tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable. When the burden of proof shifts in trial for murder.

§ 5045. s 269. Upon a trial for forging any bill or note, purporting to be the bill or note of an incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it is not necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but Evidence upon trial for forging bank bills, etc.

Experts. it may be proved by general reputation; and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited.

Evidence upon trial for abortion and seduction. § 5046. s 270. Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, or for inveigling, enticing, or taking away any female of previous chaste character, for the purpose of prostitution, or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the woman upon or with whom the offence was committed, unless she is corroborated by other evidence.

Evidence on trial for selling, etc., lottery tickets. § 5047. s 271. Upon a trial for violation of any of the provisions of section 1990 to section 2005, both inclusive, of the Compiled Laws of Utah, it is not necessary to prove the existence of any lottery in which any lottery ticket purports to have been issued, or to prove the actual signing of any such ticket or share, or pretended ticket or share of any pretended lottery, nor that any lottery ticket, share, or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager; but in all cases proof of the sale, furnishing, bartering or procuring of any ticket, share, or interest therein, or of any instrument purporting to be a ticket or part or share of any such ticket, is evidence that such share or interest was signed and issued according to the purport thereof.

Evidence of false pretenses § 5048. s 272. Upon a trial for having, with an intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language, unaccompanied by a false token or writing, unless the pretense or some note or memorandum thereof be in writing, subscribed by or in the handwriting of the defendant, or unless the pretense be proven by the testimony of two witnesses or that of one witness and corroborating circumstances; but this section shall not apply to a prosecution for falsely representing or personating another, and, in such assumed character, marrying or receiving any money or property.

Conviction cannot be had on uncorroborated testimony of accomplice. § 5049. s 273. A conviction cannot be had on the testimony of an accomplice, unless he is corroborated by other evidence, which in itself and without the aid of the tes

timony of the accomplice, tends to connect the defendant with the commission of the offence; and the corroboration is not sufficient if it merely shows the commission of the offence or the circumstances thereof.

§ 5050. s 274. If it appears by the testimony that the facts proved constitute an offence of a higher nature than that charged in the indictment, the court may direct the jury to be discharged and all proceedings on the indictment to be suspended and may order the defendant to be committed or continued on, or admitted to bail to answer any indictment which may be found against him for a higher offence. If an indictment for the higher offence is found by a grand jury impaneled at the same or the next term thereafter, he must be tried thereon, and a plea of former acquittal to such last found indictment is not sustained by the fact of the discharge of the jury on the first indictment.

Proceedings when evidence shows higher offence than that charged.

§ 5051. s 275. The court may direct the jury to be discharged where it appears that it has no jurisdiction of the offence, or that the facts charged in the indictment do not constitute an offence punishable by law.

Court may discharge when it has not jurisdiction, etc.

§ 5052. s 276. If the jury is discharged because the court has not jurisdiction of the offence charged in the indictment and it appears that it was committed out of the jurisdiction of this Territory, the defendant must be discharged.

Proceedings when jury discharged for want of jurisdiction of offence committed out of the Territory.

§ 5053. s 277. When, in the opinion of the court, it is proper that the jury should view the place in which the offence is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the officer, to the place which must be shown to them by a person appointed by the court for that purpose; and the officer must be sworn to suffer no person to speak or communicate with the jury, nor do so himself on any subject connected with the trial and to return them into court without unnecessary delay, or at a specified time.

View of premises, when ordered, and how conducted.

§ 5054. s 278. The jurors sworn to try an indictment may, at any time before the submission of the cause to the jury, in the discretion of the court, be permitted to separate or be kept in charge of a proper officer. The officer must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to them or communicate with them, nor to do so himself, on any subject

Jurors may be permitted to separate during trial.

If kept together, oath of officer.

connected with the trial, and to return them into court at the next meeting thereof.

Jury, at each adjournment must be admonished, etc.

§ 5055. s 279. The jury must also at each adjournment of the court, whether permitted to separate or kept in charge of officer, be admonished by the court that it is their duty not to converse among themselves or with any one else on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them.

Proceedings when juror becomes unable to perform his duties. Feb. 22, 1878.

§ 5056. s 280. If, before the conclusion of the trial, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn and the trial begin anew, or the jury may be discharged and a new jury then or afterwards impaneled.

Court to decide all questions of law

§ 5057. s 281. The court must decide all questions of law which arise in the course of a trial.

On trial for libel, jury to determine law and fact.

§ 5058. s 282. On the trial of an indictment for libel, the jury have the right to determine the law and the fact.

In all other cases court to decide questions of law. March 13, 1884.

§ 5059. s 283. On a trial for any other offence than libel, questions of law are to be decided by the court, questions of fact by the jury: and, although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

Charging the jury. Feb. 22, 1878.

§ 5060. s 284. In charging the jury, the court must state to them all matters of law necessary for their information. Either party may present to the court any written charge and request that it be given. If the court thinks it correct and pertinent, it must be given: if not, it must be refused. Upon each charge presented and given or refused, the court must endorse and sign its decision. If part be given and part refused, the court must distinguish, showing by the indorsement what part of the charge was given and what part refused.

Jury may decide in court, or retire in charge of officer. Oath of officer.

§ 5061. s 285. After hearing the charge the jury may either decide in court or may retire for deliberation. If they do not agree without retiring, an officer must be sworn to keep them together in some private and convenient place, and not permit any person to speak to or communicate with them, nor to do so himself, unless by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

§ 5062. s 286. When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer, to abide the judgment or further order of the court, and he must be committed and held in custody accordingly.

When defendant on bail appears for trial, he may be committed.

§ 5063. s 287. If the prosecuting attorney fails to attend at the trial, the court must appoint some attorney-at-law to perform the duties of the prosecuting attorney on such trial.

If prosecuting attorney fails to attend, court must appoint substitute.

CHAPTER III.

CONDUCT OF THE JURY AFTER THE CAUSE IS SUBMITTED TO THEM.

SECTION.	SECTION.
5064 Accommodations for the jury when kept together.	5069 When jury discharged or prevented from giving a verdict, cause to be again tried.
5065 What papers jury may take with them.	5070 Court may adjourn during the absence of the jury, but deemed open for all purposes connected with cause.
5066 After retirement, may return into court for information.	5071 Final adjournment discharges jury.
5067 If, after retirement, juror becomes sick, etc, jury may be discharged.	
5068 Jury not to be discharged for any other cause, unless there is no reasonable probability of their agreeing.	

§ 5064. s 288. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation they must be provided by the proper officer, with suitable and sufficient food and lodging.

Accommodations for the jury when kept together.

§ 5065. s 289. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such public records or private documents given in evidence as ought not, in the opinion of the court to be taken from the person having them in possession. They may also take with them the written instructions given, and notes of the

What papers the jury may take with them.

testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

After retirement may return to court for information.

§ 5066. s 290. After the jury have retired for deliberation, if there is any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. Upon being brought into court, the information required must be given in the presence of, or after notice to, the prosecuting attorney and the defendant or his counsel.

If after retirement, juror becomes sick, etc., jury may be discharged.

§ 5067. s 291. If, after the retirement of the jury, one of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept for deliberation, the jury may be discharged.

Jury not to be discharged for any other cause, unless there is no reasonable probability of their agreeing.

§ 5068. s 292. Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict and rendered it in open court, unless by consent of both parties, entered upon the minutes: or, unless, at the expiration of such time as the court may deem proper, it satisfactorily appears that there is no reasonable probability that the jury can agree.

When jury discharged or prevented from giving a verdict, cause to be again tried.

§ 5069. s 293. In all cases where a jury are discharged or prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged from the indictment during the progress of the trial or after the cause is submitted to them, the cause may be again tried at the same or another term.

Court may adjourn during the absence of the jury, but deemed open for all purposes connected with cause.

§ 5070. s 294. While the jury are absent the court may adjourn from time to time, as to other business, but it must nevertheless be open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged.

Final adjournment discharges jury.

§ 5071. s 295. A final adjournment of the court discharges the jury.

CHAPTER IV.

THE VERDICT.

SECTION.	SECTION.
5072 Return of jury.	5079 Reconsideration of verdict, when it may be directed by the court.
5073 Appearance of defendant.	5080 Informal verdict, when judgment may be given on.
5074 Manner of taking verdict.	5081 Polling the jury.
5075 Verdict, form of.	5082 Recording the verdict.
5076 Degree of crime, jury to find.	5083 Defendant when to be discharged
5077 Jury may convict of lesser offence, or of attempt.	5084 When to be detained.
5078 Verdict as to some defendants and another trial as to others.	

§ 5072. s 296. When the jury have agreed upon their verdict they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving their verdict. In that case the action may be again tried at the same or another term.

§ 5073. s 297. If indicted for felony, the defendant must before the verdict is received, appear in person. If for a misdemeanor, the verdict may be rendered in his absence.

§ 5074. s 298. When the jury appear they must be asked by the court or clerk whether they have agreed upon their verdict, and if the foreman answers in the affirmative, they must, on being required, declare the same.

§ 5075. s 299. A verdict upon a plea of not guilty is either "guilty" or "not guilty," which imports a conviction or acquittal of the offence charged in the indictment. Upon a plea of a former conviction or acquittal of the same offence, it is either "for the people" or "for the defendant."

§ 5076. s 300. Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

§ 5077. s 301. They [The] jury may find the defendant guilty of any offence, the commission of which is necessarily included in that with which he is charged in the indictment, or of an attempt to commit the offence.

§ 5078. s 302. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which

Return of jury.

Appearance of defendant.

Manner of taking verdict.

Verdict, form of.

Degree of crime, jury to find.

Jury may convict of lesser offence, or of attempt.

Verdict as to some defendants and another trial as to others.

a judgment must be entered accordingly, and the case as to the others may be tried by another jury.

Reconsideration of verdict, when it may be directed by the court.

§ 5079. s 303. When there is a verdict of conviction, in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion and direct the jury to reconsider their verdict, and if, after the reconsideration, they return the same verdict, it must be entered: but when there is a verdict of acquittal, the court cannot require the jury to reconsider it. If the jury render an informal verdict the court may direct them to reconsider it, and it cannot be recorded until it is rendered in some form from which it can be clearly understood what the intent of the jury is.

Informal verdict, when judgment may be given on.

§ 5080. s 304. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it must be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant upon the issue.

Polling the jury.

§ 5081. s 305. When a verdict is rendered and before it is recorded, the jury may be polled, at the request of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

Recording the verdict.

§ 5082. s 306. When the verdict given is such as the court may receive, the clerk must immediately record it in full upon the minutes, read it to the jury, and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the minutes and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury must be discharged from the case.

Defendant, when to be discharged.

§ 5083. s 307. If judgment of acquittal is given on a verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

When to be detained.

§ 5084. s 308. If a verdict is rendered against the defendant, he must be remanded, if in custody, or if on bail, he may be committed to the proper officer to await the judgment of the court upon the verdict. When committed his bail is exonerated, or if money is deposited instead of bail, it must be refunded to the defendant.

CHAPTER V.

BILLS OF EXCEPTION.

SECTION.

5085 Exception; in what cases may be taken.

5086 When to be settled, signed and filed.

5087 Exceptions after trial, which may be taken by either party.

5088 Exceptions which may be taken by defendant.

SECTION.

5089 Exceptions in two preceding sections, how and when settled and filed.

5090 Bill of exceptions, must contain what.

5091 Written charges need not be excepted to.

§ 5085. s 309. On the trial of an indictment, excep- Feb. 22, 1878.
tions may be taken by the defendant to a decision of the court Exceptions, in what cases may be taken.
upon a matter of law, in any of the following cases:

1. In disallowing a challenge to the panel of the jury, March 13, 1884.
or to an individual juror, for implied bias.

2. In admitting or rejecting testimony on the trial of a Feb. 22, 1878.
challenge to a juror for actual bias.

3. In admitting or rejecting witnesses or testimony, or in deciding any question of law not a matter of discretion, or in charging or instructing the jury upon the law on the trial of the issue.

§ 5086. s 310. When the party desires to have the ex- Exceptions, when to be settled, signed and filed.
ceptions taken at the trial, settled in a bill of exceptions, the March 13, 1884.
draft of the bill must be prepared by him and presented, upon notice of at least ten days to the prosecuting attorney, to the judge for settlement, within fifteen days after judgment has been rendered against him, unless further time is granted by the judge, or by a justice of the supreme court, or within that period the draft must be delivered to the clerk of the court for the judge. When received by the clerk he must deliver it to the judge, or transmit it to him at the earliest period practicable. When settled, the bill must be signed by the judge, and filed with the clerk of the court.

§ 5087. s 311. Exceptions may be taken by either Exceptions after trial, which may be taken by either party.
party to a decision of the court or judge upon a matter of law:

1. In granting or refusing a motion in arrest of judgment.

2. In granting or refusing a motion for a new trial.

3. In making, or refusing to make, an order after judgment, affecting the substantial rights of the parties.

Exceptions
which may be
taken by de-
fendant.

§ 5088. s 312. Exceptions may be taken by the defendant to a decision of the court upon a matter of law:

1. In refusing to grant a motion for a change of the place of trial.

2. In refusing to postpone the trial on motion of the defendant.

Feb. 22, 1878.

Exceptions in
two sections,
how and when
settled and
filed.

§ 5089. s 313. A bill containing the exceptions mentioned in the last two sections must be settled by the judge, and filed with the clerk of the court within ten days after the making of the order or ruling complained of.

Bill of excep-
tions must con-
tain what.

March 18, 1884.

§ 5090. s 314. A bill of exceptions must contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken; and the judge must upon the settlement of the bill, whether agreed to by the parties or not, strike out all other matters contained therein.

Written
charges need
not be except-
ed to.

Feb. 22, 1878.

§ 5091. s 315. When written charges have been presented, given or refused, the questions presented in such charges need not be excepted to or embodied in a bill of exceptions, but the written charges or the report, with the endorsements showing the action of the court, form part of the record, and any error in the decision of the court thereon may be taken advantage of on appeal, in like manner as if presented in a bill of exceptions.

CHAPTER VI.

THE TRIALS.

SECTION.

5092 New trial defined.

5093 Its effect.

SECTION.

5094 New trial, when it may be granted.

5095 Application for, when to be made

Feb. 22, 1878.

New trial de-
fined.

§ 5092. s 316. A new trial is a re-examination of the issue in the same court before another jury, after a verdict has been given.

§ 5093. s 317. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to either in evidence or in argument, or be pleaded in the bar of any conviction which might have been had under the indictment. Its effect.
March 13, 1881.

§ 5094. s 318. When a verdict has been rendered against the defendant, the court may, upon his application, grant a new trial in the following cases only: New trial,
when it may
be granted.

1. When the trial has been had in his absence, if the indictment is for a felony.

2. When the jury has received any evidence out of court, other than that resulting from a view of the premises.

3. When the jury has separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case may have been prevented.

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors.

5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial.

6. When the verdict is contrary to law or evidence.

7. When new evidence is discovered, material to the defendant and which he could not, with reasonable diligence, have discovered and produced at the trial.

When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as, under all the circumstances of the case, may seem reasonable.

§ 5095. s 319. The application for a new trial must be made before judgment. Application
for, when to
be made.

CHAPTER VII.

ARREST OF JUDGMENT.

SECTION.

5096 Motion in arrest for judgment
defined. Upon what defects
founded, and when made.
5097 Court may arrest judgment with-
out motion.

SECTION.

5098 Arresting judgment; effect of,
defined. Upon what defects
5099 Defendant, when to be held;
when discharged.

Motion in ar-
rest of judg-
ment defined.

§ 5096. s 320. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant, on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment mentioned in section 192, unless the objection to the indictment has been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment.

Upon what
defects
founded and
when made.

§ 5097. s 321. The court may also, on its own view of any of these defects, arrest the judgment without motion.

Court may ar-
rest judgment
without mo-
tion.

§ 5098. s 322. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found.

Arresting
judgment,
effect of.
Defendant,
when to be
held.

When dis-
charged.

§ 5099. s 323. If, from the evidence on the trial, there is reason to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the court may order him to be re-committed to the proper officer or admitted to bail anew, to answer the new indictment. If the evidence shows him guilty of another offence, he must be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution or indictment. But if no evidence appears sufficient to charge him with any offence, he must, if in custody, be discharged; or if admitted to bail, his bail is exonerated; or if money has been deposited instead of bail, it must be refunded to the defendant; and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment was founded.

TITLE VII.

OF JUDGMENT AND EXECUTION.

CHAPTER I. The judgment.

CHAPTER II. The execution.

CHAPTER I.

THE JUDGMENT.

SECTION.	SECTION.
5100 Appointing time for judgment.	5109 What cause may be shown against judgment.
5101 Upon plea of guilty, court must determine degree.	5110 If no cause shown, judgment to be pronounced.
5102 Presence of defendant.	5111 Court may summarily inquire into circumstances, in aggravation or mitigation of the offence.
5103 Defendant when on bail, how brought before the court.	5112 Proof of fact, etc., in mitigation, how made.
5104 Bench warrant, who may issue and when.	5113 Duration of imprisonment on judgment to pay a fine.
5105 Bench warrant, form of.	5114 Judgment to pay a fine constitutes a lien.
5106 Bench warrant, how served.	5115 Entry of judgment and judgment roll.
5107 Arrest of defendant.	
5108 Arraignment of defendant for judgment.	

§ 5100. s 324. After a plea or verdict of guilty, or ^{Appointing time for judgment.} after a verdict against the defendant, on a plea of a former conviction or acquittal, if the judgment is not arrested or a new trial granted, the court must appoint a time for pronouncing judgment, which must be at least two days after the verdict, if the court intend to remain in session so long: or if not, as remote a time as can reasonably be allowed. But in no case can the judgment be rendered in less than six hours after the verdict.

§ 5101. s 325. Upon a plea of guilty of a crime distinguished or divided into degrees, the court must, before passing sentence, determine the degree. ^{Upon plea of guilty, court must determine degree.}

Presence of
defendant.

§ 5102. s 326. For the purpose of judgment, if the conviction is for felony, the defendant must be personally present; if for a misdemeanor, the judgment may be pronounced in his absence.

Defendant
when on bail,
how brought
before the
court.

§ 5103. s 327. If the defendant has been discharged on bail or has deposited money instead thereof, and does not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or of money deposited, may direct the clerk to issue a bench warrant for his arrest.

Bench warrant

Bench war-
rant, who may
issue and
when.

§ 5104. s 328. The clerk, on the application of the prosecuting attorney, may, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

Bench war-
rant, form of.

§ 5105. s 329. The bench warrant must be substantially in the following form:

County of——

The people of the Territory of Utah, to any sheriff, constable, marshal, or policeman in this Territory:

A. B. having been, on the——day of——, A. D., eighteen hundred and——duly convicted in the ——district court of the——judicial district, of the crime of——, (designating it generally,) you are therefore commanded forthwith to arrest the above named A. B. and bring him before that court for judgment; or if the court has adjourned for the term, that you deliver him into the custody of the United States marshal, or sheriff of the county of——. Given under my hand with the seal of said county affixed, this——day of—— A. D., eighteen hundred and——.

By order of the court.

[Seal.]

E. F., Clerk.

Bench war-
rant, how
served.

§ 5106. s 330. The bench warrant may be served in any county in the same manner as a warrant of arrest.

Arrest of de-
fendant.

§ 5107. s 331. Whether the bench warrant is served in the county in which it was issued or in another county, the officer must arrest the defendant, and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

Arraignment
of defendant
for judgment.

§ 5108. s 332. When the defendant appears for judgment he must be informed by the court, or by the clerk, under its direction, of the nature of the indictment and of his plea, and the verdict, if any, thereon, and must be asked

whether he has any legal cause to show why judgment should not be pronounced against him.

§ 5109. s 333. He may show for cause against the judgment: What cause may be shown against judgment.

1. That he is insane; and if, in the opinion of the court, there is reasonable ground for believing him to be insane, the question of insanity must be tried, as provided in Chapter 6, Title 9. If, upon the trial of that question, the jury find that he is sane, judgment must be pronounced, but if they find him insane, he must be committed to a lunatic asylum until he becomes sane; and when notice is given of that fact, as provided in section 459, he must be brought before the court for judgment.

2. That he has good cause to offer, either in arrest of judgment or for a new trial; in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment or for a new trial.

§ 5110. s 334. If no sufficient cause is alleged or appears to the court why judgment should not be pronounced, it must thereupon be rendered. If no cause shown, judgment to be pronounced.

§ 5111. s 335. After a plea or verdict of guilty, when a discretion is conferred upon the court as to the extent of the punishment, the court, upon the oral suggestion of either party that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily, at a specified time, and upon such notice to the adverse party as it may direct. Court may summarily inquire into circumstances in aggravation or mitigation of punishment.

§ 5112. s 336. The circumstances must be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken by a magistrate of the county, out of court, upon such notice to the adverse party as the court may direct. No affidavit or testimony, or representation of any kind, verbal or written, can be offered to or received by the court or a judge thereof, in aggravation or mitigation of the punishment, except as provided in this and the preceding section. Proof of facts, etc., in mitigation, how made.

§ 5113. s 337. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is

Duration of
imprisonment
and fine, &c.
to pay, &c.
Judgment for
fine or imprisonment
or both.

satisfied, specifying the extent of the imprisonment, which cannot exceed one day for every one dollar of the fine.

§ 5114, s 338. A judgment that the defendant pay a fine constitutes a lien, in like manner as a judgment for money rendered in a civil action.

Entry of judgment and
minutes.

§ 5115, s 339. When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offence for which the conviction was had, and the fact of a prior conviction, (if one), and must, within five days, annex together and file the following papers, which constitute a record of action.

1. A copy of the minutes of a challenge interposed by the defendant to the panel of the grand jury, or to an individual grand juror, and the proceedings and decision thereon.

2. The indictment and a copy of the minutes of the plea or demurrer.

3. A copy of the minutes of a challenge interposed to the panel of the trial jury or to an individual juror, and the proceedings and decisions thereon.

4. A copy of the minutes of the trial.

5. A copy of the minutes of the judgment.

6. The bill of exceptions, if there be one.

7. The written charges asked of the court, and refused, if there be any.

8. A copy of all charges given and of the indorsements thereon.

CHAPTER II.

THE EXECUTION.

SECTION.

- 5116 Authority for the execution of a judgment other than death.
- 5117 If for fine alone, execution to issue as in civil cases.
- 5118 Judgment for fine and imprisonment, by whom and how executed.
- 5119 Judgment of imprisonment, how executed.
- 5120 Warrant of execution upon judgment of death. Time of execution.
- 5121 Judgment to transmit statement of conviction and testimony to the Governor.
- 5122 Governor may require opinion of justice of the supreme court, etc., thereon.
- 5123 Judgment of death, when suspended.

SECTION.

- 5124 If reason to suppose defendant insane, jury to inquire into it; how and by whom ordered.
- 5125 Prosecuting attorney, duty of, upon inquisition.
- 5126 Inquisition, how certified and filed.
- 5127 Proceedings upon finding of jury.
- 5128 When female under judgment of death is supposed to be pregnant, proceedings.
- 5129 Proceedings upon the finding of the jury.
- 5130 Proceedings when judgment of death, remaining in force, has not been executed.
- 5131 Punishment of death, how inflicted.
- 5132 Execution, where to take place and who to be present.
- 5133 Return upon death warrant.

§ 5116. § 340. When a judgment, other than death, has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

§ 5117. § 341. If the judgment is for a fine alone, execution may be issued thereon as on a judgment in a civil action.

§ 5118. § 342. If the judgment is for imprisonment, or a fine and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment is complied with.

§ 5119. § 343. If the judgment is for imprisonment in the penitentiary, the proper officer must, upon receipt of a certified copy thereof, take and deliver the defendant to the warden of the penitentiary. He must also deliver to the warden the certified copy of the judgment and take from the warden a receipt for the defendant.

Execution for the execution of a judgment and return thereon.

If for fine, a writ of execution may be issued as in civil cases.

Judgment of fine and imprisonment, how executed.

Judgment of imprisonment, how executed.

Warrant of execution upon judgment of death. Time of execution.

§ 5120. s 344. When judgment of death is rendered, a warrant, signed by the judge and attested by the clerk, under the seal of the court, must be drawn and delivered to the proper officer. It must state the conviction and judgment, and appoint a day on which the judgment is to be executed, which must not be less than thirty nor more than sixty days from the time of judgment.

Judge to transmit statement of conviction and testimony to Governor.

§ 5121. s 345. The judge of a court at which a conviction requiring judgment of death is had, must, immediately after the conviction, transmit to the Governor, by mail or otherwise, a statement of the conviction and judgment and of the testimony given at the trial.

Governor may require opinion of justice of supreme court, etc., thereon.

§ 5122. s 346. The Governor may thereupon require the opinion of the justice of the supreme court, and of the attorney-general, or any of them, upon the statement so furnished.

Judgment of death, when suspended.

§ 5123. s 347. No judge, court or officer, other than the Governor, can suspend the execution of a judgment of death, except the proper officer, as provided in the six succeeding sections, unless an appeal is taken.

If reason to suppose defendant insane, jury to inquire into it; how and by whom ordered.

§ 5124. s 348. If, after judgment of death, there is good reason to suppose that the defendant has become insane, the proper officer, with the concurrence of the judge of the court by which the judgment was rendered, may summon from the list of the jurors selected by the proper officers for the year, a jury of twelve persons to inquire into the supposed insanity, and must give immediate notice thereof to the prosecuting attorney or other counsel for the people.

Prosecuting attorney, duty of, upon inquisition.

§ 5125. s 349. The prosecuting attorney must attend the inquisition and may produce witnesses before the jury for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the court.

Inquisition, how certified and filed.

§ 5126. s 350. A certificate of the inquisition must be signed by the jurors and the proper officer, and filed with the clerk of the court in which the conviction was had.

Proceedings upon finding of the jury.

§ 5127. s 351. If it is found by the inquisition that the defendant is sane, the proper officer must execute the judgment; but if it is found that he is insane, such officer must suspend the execution of the judgment until he receives a warrant from the Governor or from the judge of the court

by which the judgment was rendered, directing the execution of the judgment. If the inquisition finds that the defendant is insane, the officer must immediately transmit it to the Governor who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

§ 5128. s 352. If there is a good reason to suppose that a female against whom a judgment of death is rendered is pregnant, the proper officer, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice thereof must be given to the prosecuting attorney, and the provisions of section 349 and 350 apply to the proceedings upon the inquisition. When female under judgment of death is supposed to be pregnant proceedings.

§ 5129. s 353. If it is found by the inquisition that the female is not pregnant, the proper officer must execute the judgment; if it is found that she is pregnant, the officer must suspend the execution of the judgment, and transmit the inquisition to the Governor. When the Governor is satisfied that the female is no longer pregnant, he may issue his warrant, appointing a day for the execution of the judgment. Proceedings upon finding of jury.

§ 5130. s 354. If, for any reason, a judgment of death has not been executed, and it remains in force, the court in which the conviction was had, on the application of the prosecuting attorney, must order the defendant to be brought before it, or, if he is at large, a warrant for his apprehension may be issued. Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reasons exist against the execution of the judgment, must make an order that the proper officer execute the judgment at a specified time. The officer must execute the judgment accordingly. Proceedings when judgment of death remaining in force has not been executed.

§ 5131. s 355. The punishment of death must be inflicted by hanging the defendant by the neck until he is dead, or by being shot, at his election. If the defendant neglect or refuse to make the election, the court, at the time of rendering the sentence, must declare the mode and enter the same as a part of its judgment. Punishment of death, how inflicted.

§ 5132. s 356. A judgment of death must be executed within the walls or yard of a jail or some convenient private place in the district. The proper officer must be present, with such assistants as he may need, at the execution, and must invite the presence of a physician, and the prosecuting Execution where to take place and who to be present

attorney, and he shall, at the request of the defendant, permit such ministers of the gospel, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution. But no other person than those mentioned in this section can be present at the execution, nor can any person under age be permitted to witness the same.

Return upon
death warrant.

§ 5133. s 357. After the execution, the proper officer must make a return upon the death warrant, showing the time, mode and manner in which it was executed.

TITLE VIII.

OF APPEALS TO THE SUPREME COURT.

- CHAPTER I. Appeals, when allowed and how taken, and the effect thereof.
 CHAPTER II. Dismissing an appeal for irregularity.
 CHAPTER III. Argument on the appeal.
 CHAPTER IV. Judgment on appeal.

CHAPTER I.

APPEALS, HOW ALLOWED AND HOW TAKEN AND THE EFFECT THEREOF.

SECTION.

- 5134 Either party may appeal, on question of law.
 5135 Parties, how designated on appeal.
 5136 Appeal by defendant; in what cases may be taken.
 5137 Appeal by the people, in what cases may be taken.
 5138 Appeal, within what time to be taken.

SECTION.

- 5139 Appeal, how taken.
 5140 When notice may be served by publication.
 5141 Appeal by the people, effect of.
 5142 Appeal by defendant, effect of.
 5143 Same. Duty of officer.
 5144 Same.
 5145 Duty of clerks upon appeal.

Either party
may appeal on
a question of
law.

§ 5134. s 358. Either party in a criminal action, may appeal to the supreme court on questions of law alone, as prescribed in this Chapter.

§ 5135. s 359. The party appealing is known as the appellant, and the adverse party as the respondent, but the title of the action is not changed in consequence of the appeal. Parties, how designated on appeal.

§ 5136. s 360. An appeal may be taken by the defendant: Appeal by defendant, in what cases may be taken.

1. From a final judgment of conviction.
2. From an order denying a motion for a new trial.
3. From an order made after judgment, affecting the substantial rights of the party.

§ 5137. s 361. An appeal may be taken by the people: Appeal by the people, in what cases may be taken.

1. From a judgment for the defendant on a demurrer to the indictment.

2. From an order granting a new trial.

3. From an order arresting judgment.

4. From an order made after judgment affecting the substantial rights of the people.

§ 5138. s 362. An appeal from a judgment must be taken within one year after its rendition, and from an order within sixty days after it is made. Appeals, within what time to be taken.

§ 5139. s 363. An appeal is taken by filing with the clerk of the court in which the judgment or order appealed from is entered or filed, a notice stating the appeal from the same, and serving a copy thereof upon the attorney of the adverse party. Appeal, how taken.

§ 5140. s 364. If personal service of the notice cannot be made the judge of the court in which the action was tried, upon proof thereof, may make an order for the publication of the notice in some newspaper for a period not exceeding thirty days; such publication is equivalent to personal service. When notice may be served by publication.

§ 5141. s 365. An appeal taken by the people in no case stays or effects the operation of a judgment in favor of the defendant, until judgment is reversed. Appeal by the people, effect of.

§ 5142. s 366. An appeal to the supreme court from a judgment of conviction stays the execution of the judgment, upon filing with the clerk of the court in which the conviction was had, a certificate of the judge of such court, or of a justice of the supreme court, that in his opinion there is probably cause for the appeal, but not otherwise. Appeal by defendant, effect of.

§ 5143. s 367. If the certificate provided for in the preceding section is filed, the sheriff must, if the defendant

Duty of officer. be in his custody, upon being served with a copy thereof, keep the defendant in his custody without executing the judgment and detain him to abide the judgment on appeal.

Same. § 5144. s 368. If, before the granting of the certificate, the judgment has commenced, the further execution thereof is suspended, and upon service of a copy of such certificate the defendant must be restored, by the officer in whose custody he is, to his original custody.

Duty of clerks upon appeal. § 5145. s 369. Upon the appeal being taken the clerk with whom the notice of appeal is filed must, within ten days thereafter, without charge transmit to the clerk of the appellate court a copy of the notice of appeal, and of the record, and of all bills of exception, instructions and indorsements thereon; and upon the receipt thereof, the clerk of the appellate court must file the same and perform the same service as in civil cases, without charge.

CHAPTER II.

DISMISSING AN APPEAL FOR IRREGULARITY.

SECTION.

5146 For what irregularity and how dismissed.

SECTION.

5147 Dismissed for want of proper return.

For what irregularity and how dismissed.

§ 5146. s 370. If the appeal is irregular in any substantial particular, but not otherwise, the appellate court may, on any day in the term, on motion of the respondent, upon five days notice, accompanied with copies of the papers upon which the motion is founded, order it to be dismissed.

Dismissed for want of proper return.
Feb. 22, 1878.

§ 5147. s 371. The court may also, upon like motion, dismiss the appeal, if the return is not made as provided in section 369, unless for good cause they enlarge the time for that purpose.

CHAPTER III.

ARGUMENT OF THE APPEAL.

SECTION.

5148 Appeals, when to be heard and determined.

5149 Judgment may be affirmed, but cannot be reversed without argument.

SECTION.

5150 Number of counsel to be heard.
5151 Defendant need not be present.

§ 5148. s 372. All appeals in criminal cases must be heard and determined at the first term of the appellate court after the record is filed, unless continued on motion or with the consent of the defendant.

Appeals when to be heard and determined.
March 13, 1884.

§ 5149. s 373. The judgment may be affirmed if the appellant fail to appear, but can be reversed only after argument, though the respondent fail to appear.

Judgment may be affirmed, but cannot be reversed without argument.
Feb. 22, 1878.

§ 5150. s 374. Upon the argument of the appeal, if the offence is punishable with death, two counsel must be heard on each side, if they require it: in any other case the court may, in its discretion, restrict the argument to one counsel on each side.

Number of counsel to be heard.

§ 5151. s 375. The defendant need not personally appear in the appellate court.

Defendant need not be present.

CHAPTER IV.

ARGUMENT UPON APPEAL.

SECTION.

5152 Court to give judgment without regard to technical errors.

5153 What may be reviewed on an appeal by defendant from a judgment.

5154 May reverse, affirm or modify the judgment and order a new trial.

5155 New trial, where to be had.

SECTION.

5156 Reversal of judgment against defendant, proceedings after.

5157 Judgment affirmed, to be executed.

5158 Judgment of appellate court, how entered and remitted.

5159 Jurisdiction of appellate court cases after judgment remitted.

§ 5152. s 376. After hearing an appeal, the court must give judgment, without regard to technical errors or defects,

Court to give judgment without regard to technical errors.

or to exceptions which do not affect the substantial rights of the parties.

What may be reviewed on an appeal by defendant from a judgment.

§ 5153. s 377. Upon an appeal taken by the defendant from a judgment, the court may review any intermediate order or ruling involving the merits or which may have affected the judgment.

May reverse, affirm or modify the judgment and order new trial.

§ 5154. s 378. The court may reverse, affirm or modify the judgment or order appealed from, and may set aside, affirm or modify any or all the proceedings, subsequent to or dependent upon such judgment or order, and may, if proper, order a new trial.

New trial, where to be had

§ 5155. s 379. When a new trial is ordered it must be directed to be had in the court from which the appeal was taken.

Reversal of judgment against defendant; proceedings after.

§ 5156. s 380. If a judgment against the defendant is reversed without ordering a new trial, the appellate court must, if he is in custody, direct him to be discharged therefrom; or if on bail, that his bail be exonerated; or if money was deposited instead of bail, that it be refunded to the defendant.

Judgment affirmed to be executed.

§ 5157. s 381. If a judgment against the defendant is affirmed, the original judgment must be enforced.

Judgment of appellate court how entered and remitted.

§ 5158. s 382. When the judgment of the appellate court is given, it must be entered in the minutes, and a certified copy of the entry forthwith remitted to the clerk of the court from which the appeal was taken.

Jurisdiction of appellate court cases after judgment remitted.

§ 5159. s 383. After the certificate of the judgment has been remitted to the court below, the appellate court has no further jurisdiction of the appeal or of the proceedings thereon, and all orders necessary to carry the judgment into effect must be made by the court to which the certificate is remitted.

TITLE IX.

MISCELLANEOUS PROCEEDINGS.

- CHAPTER I. Bail.
- CHAPTER II. Compelling the attendance of witnesses.
- CHAPTER III. Examination of witnesses conditionally.
- CHAPTER IV. Examination of witnesses on commission.
- CHAPTER V. Inquiry into the insanity of the defendant before trial or after conviction.
- CHAPTER VI. Compromising certain public offences by leave of the court.
- CHAPTER VII. Dismissal of the action before or after indictment, for want of prosecution, or otherwise.
- CHAPTER VIII. Proceedings against corporations.
- CHAPTER IX. Entitling affidavits.
- CHAPTER X. Errors and mistakes in pleadings and other proceedings.

CHAPTER I.

BAIL.

- ARTICLE I. In what cases defendant may be admitted to bail.
- ARTICLE II. Bail upon being held to answer before indictment.
- ARTICLE III. Bail upon indictment before conviction.
- ARTICLE IV. Bail on appeal.
- ARTICLE V. Deposit instead of bail.
- ARTICLE VI. Surrender of the defendant.
- ARTICLE VII. Forfeiture of the undertaking of bail or of the deposit of money.
- ARTICLE VIII. Recommitment of the defendant, after having given bail or deposited money instead of bail.
- ARTICLE IX. Who may be witnesses in criminal actions.

ARTICLE I.

IN WHAT CASES DEFENDANT MAY BE ADMITTED TO BAIL.

SECTION.

- 5160 Admission to bail defined.
- 5161 Taking of bail defined.
- 5162 Offence not bailable.
- 5163 When defendant may be admitted to bail before conviction.
- 5164 When defendant may be admitted to bail after conviction.

SECTION.

- 5165 On what occasions, and with what conditions, bail may be taken.
- 5166 When bail is a matter of discretion, notice of application must be given to prosecuting attorney.

Admission to bail defined.

§ 5160. § 384. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon bail.

Taking of bail defined.

§ 5161. § 385. The taking of bail consists in the acceptance by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant, according to the terms of the undertaking, or that the bail will pay to the people of this Territory a specified sum.

Offence not bailable.

§ 5162. § 386. A defendant charged with an offence punishable with death cannot be admitted to bail, when the proof of his guilt is evident or the presumption thereof great. The finding of an indictment does not add to the strength of the proof or the presumption to be drawn therefrom.

When defendant may be admitted to bail before conviction.

§ 5163. § 387. If the charge is for any other offence he may be admitted to bail before conviction, as a matter of right.

When defendant may be admitted to bail after conviction.

§ 5164. § 388. After conviction of an offence not punishable with death, a defendant who has appealed may be admitted to bail.

1. As a matter of right, when the appeal is from a judgment imposing a fine only.

2. As a matter of discretion in all other cases.

On what occasions, and with what conditions, bail may be taken.

§ 5165. § 389. If the offence is bailable, the defendant may be admitted to bail before conviction:

1. For his appearance before the magistrate on the examination of the charge before being held to answer.

2. To appear at the court to which the magistrate is required to return the depositions and statement, upon the defendant being held to answer after examination.

3. After indictment, either before bench warrant is issued for his arrest or upon any order of the court committing him or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found or to which it may be transferred for trial.

4. And after conviction and upon an appeal.

5. If the appeal is from a judgment imposing a fine only, on the undertaking of bail, that he will pay the sum, or such part of it as the appellate court may direct, if the judgment is affirmed or modified, or the appeal is dismissed.

6. If judgment of imprisonment has been given, that he will surrender himself in execution of the judgment, upon

its being affirmed or modified, or upon the appeal being dismissed.

§ 5166. s 390. When the admission to bail is a matter of discretion, the court or officer to whom the application is made must require reasonable notice thereof to be given to the prosecuting attorney.

When bail is a matter of discretion, notice of application must be given to prosecuting attorney.

ARTICLE II.

BAIL UPON BEING HELD TO ANSWER BEFORE INDICTMENT.

SECTION.

5167 What magistrates may admit to bail.

5168 Bail how put in. Form of undertaking.

SECTION.

5169 Qualifications of bail.

5170 Bail, how to justify.

5171 On allowance of bail, defendant to be discharged.

§ 5167. s 391. When the defendant has been held to answer upon an examination for a public offence, the admission to bail may be by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of habeas corpus.

What magistrates may admit to bail.

§ 5168. s 392. Bail is put in by a written undertaking, executed by two sufficient sureties, (with or without the defendant, in the discretion of the magistrate,) and acknowledged before the court or magistrate, in substantially the following form:

Bail, how put in.

An order having been made on the——day of——, A. D. eighteen hundred and ——, by A. B., a justice of the peace of——county (or as the case may be), that C. D. be held to answer upon a charge of (stating briefly the nature of the offence), upon which he has been admitted to bail in the sum of ——dollars. We, E. F. and G. H. (stating the place of their residence and occupation) hereby undertake that the above named C. D. will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and if convicted, will appear for judgment and render himself in execution thereof, or if he fails to perform either

Form of undertaking

of these conditions, that he will pay to the people of the Territory of Utah, the sum of——dollars (inserting the sum in which the defendant is admitted to bail).

Qualifications
of bail.

§ 5169. s 393. The qualifications for bail are as follows:

1. Each of them must be a resident householder, or freeholder within this Territory; but the court or magistrate may refuse to accept any person as bail who is not a resident of the district where bail is offered.

2. They must each be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court or magistrate, on taking bail may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of sufficient bail.

Bail how to
justify.

§ 5170. s 394. The bail must in all cases justify by affidavit taken before the magistrate, that they each possess the qualifications provided in the preceding section. The magistrate may further examine the bail upon oath concerning their sufficiency, in such manner as he may deem proper.

On allowance
of bail, defend
ant to be dis
charged.

§ 5171. s 395. Upon the allowance of bail and execution of the undertaking, the magistrate must, if the defendant is in custody, make and sign an order for his discharge, upon the delivery of which to the proper officer, the defendant must be discharged.

ARTICLE III.

BAIL UPON AN INDICTMENT BEFORE CONVICTION.

SECTION.

5172 When offence is not capital.

5173 When the offence is capital.

5174 Bail upon habeas corpus,
upon motion.

SECTION.

5175 Bail, how put in. Form of un-
dertaking.

5176 Sections applicable to qualifica-
tion, etc.

When offence
is not capital.

§ 5172. s 396. When the offence charged in the indictment is not punishable with death, the officer serving the bench warrant must, if required take the defendant before a

magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail.

§ 5173. s 397. If the offence charged in the indictment is punishable with death, the officer arresting the defendant must deliver him into custody, according to the command of the bench warrant. When offence is capital.

§ 5174. s 398. When the defendant is so delivered into custody he must be held by the proper officer, unless admitted to bail on examination upon a writ of habeas corpus, or upon a motion to the court in which the action is pending, or the judge thereof, to be admitted to bail. Bail upon habeas corpus or upon motion.

§ 5175. s 399. The bail must be put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate, in substantially the following form: Bail how put in.

An indictment having been found on the——day of——, Form of undertaking.
 A. D.—, in the district court, of the——district, charging A. B. with the crime of—— (designating it generally), and he having been admitted to bail in the sum of——dollars, we, C. D. and E. F., of—— (stating their place of residence and occupation), hereby undertake that the above named A. B. will appear and answer the indictment above mentioned, in whatever court it may be prosecuted, and will at all times render himself amenable to the orders and process of the court, and, if convicted, will appear for judgment and render himself in execution thereof, or, if he fails to perform either of these conditions, that we will pay to the people of the Territory of Utah, the sum of——dollars (inserting the sum in which the defendant is held to bail).

§ 5176. s 400. The provisions contained in sections 402, 403 and 404, in relation to bail, apply to the qualifications of the bail, and to all the proceedings respecting the putting in and justifying of bail, and incident thereto. Sections applicable to qualifications, etc.

ARTICLE IV.

BAIL ON ~~APPEAL~~.

SECTION.

5177 Who may admit to bail.

SECTION.

5178 Qualifications of bail, how put in and condition of undertaking

Who may admit to bail.

§ 5177. s 401. In the cases in which the defendant may be admitted to bail upon an appeal, the order admitting him to bail may be made by any magistrate having the power to issue a writ of habeas corpus.

Qualifications of bail, how put in and condition of undertaking

§ 5178. s 402. The bail must possess the qualifications, and must be put in, in all respects as provided in Article 2 of this Chapter, except that the undertaking must be conditioned as prescribed in section 389, for undertaking of bail on appeal.

ARTICLE V.

DEPOSIT INSTEAD OF BAIL.

SECTION.

5179 Deposit, when and how made.

5180 May make deposit in lieu of bail, before forfeiture.

SECTION.

5181 Deposit to be applied in payment of fine and costs.

Deposit, when and how made

§ 5179. s 403. The defendant, at any time after an order admitting him to bail, instead of giving bail may deposit with the clerk of the court in which he is held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is, a certificate of the deposit, he must be discharged from custody.

May make deposit in lieu of bail before forfeiture.

§ 5180. s 404. If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the recogniz-

ance,^s and upon the deposit being made the bail is exonerated.

§ 5181, s 495. When money has been deposited, if it remains on deposit at the time of a judgment for the payment of a fine, the clerk must, under the direction of the court, apply the money in satisfaction thereof, and after satisfying the fine and costs, must refund the surplus, if any, to the defendant.

Deposit to be
applied in pay-
ment of fine
and costs.

ARTICLE VI.

SURRENDER OF THE DEFENDANT.

SECTION.

5182 Surrender, by whom; when and how made.
5183 By whom, etc., the defendant may be arrested for the purpose of a surrender.

SECTION.

5184 On a surrender before forfeiture, money deposited to be refunded, etc.

§ 5182, s 496. At any time before the forfeiture of their undertaking, the bail may surrender the defendant in their exoneration, or he may surrender himself to the officer to whose custody he was committed at the time of giving bail, in the following manner.

Surrender by
defendant, or
bail, before forfe-
ture.

1. A certified copy of undertaking of bail must be delivered to the officer, who must detain the defendant in his custody thereon, as upon the commitment, and by a certificate in writing acknowledge the surrender.

2. Upon the undertaking and the certificate of the officer, the court in which the action or appeal is pending; may, upon notice of five days to the prosecuting attorney, with a copy of the undertaking and certificate, order that the bail be exonerated, and on filing the order and the papers used on the application, they are exonerated accordingly.

§ 5183, s 497. For the purpose of surrendering the defendant, the bail, at any time before they are finally discharged, and at any place within the Territory, may themselves arrest him, or by written authority, endorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

By whom, etc.,
the defendant
may be arrested
for the
purpose of a
surrender.

On a surrender before forfeiture, money deposited to be returned, etc.

§ 5184. s 408. If money has been deposited instead of bail and the defendant, at any time before the forfeiture thereof, surrenders himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the court must order a return deposit to the defendant, upon producing the certificate of the officer, showing the surrender, and upon a notice of five days to the prosecuting attorney, with a copy of the certificate.

ARTICLE VII.

FORFEITURE OF THE UNDERTAKING OF BAIL OR OF THE DEPOSIT OF MONEY.

SECTION.

5185 Forfeiture, in what cases and how ordered. When and how discharged.

SECTION.

5186 Forfeiture to be enforced by action.
5187 Deposit, when forfeited, how disposed of.

Forfeiture in what cases and how ordered.

§ 5185. s 409. If, without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, is thereupon declared forfeited. But if at any time before the

When and how discharged.

final adjournment of the court, the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or the deposit to be discharged upon such terms as may be just.

Forfeiture to be enforced by action.

§ 5186. s 410. If the forfeiture is not discharged as provided in the last section, the prosecuting attorney may, at any time after the adjournment of the court, proceed by action only against the bail upon their undertaking.

Deposit, when forfeited, how disposed of.

§ 5187. s 411. If, by reason of the neglect of the defendant to appear, money deposited instead of bail is forfeited, and the forfeiture is not discharged or remitted, the clerk with whom it is deposited must immediately after the final adjournment of the court, pay over the money deposited to the Territorial treasurer.

ARTICLE VIII.

RECOMMITMENT OF THE DEFENDANT, AFTER HAVING GIVEN BAIL OR DEPOSITED MONEY INSTEAD OF BAIL.

SECTION.

5188 Recommitment, in what cases to be made.

5189 Order, to contain what.

5190 Defendant may be arrested in any county.

5191 If for failure to appear for judgment defendant must be committed.

SECTION.

5192 If for other cause, defendant may be admitted to bail.

5193 Bail in such cases, by whom taken.

5194 Undertaking, form of.

5195 Bail, qualifications of and how put in.

§ 5188. s 412. The court to which the committing magistrate returns the depositions, or in which an indictment or appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order entered upon its minutes, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases:

Recommitment, in what cases to be made.

1. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof.

2. When it satisfactorily appears to the court that his bail, or either of them, are dead or insufficient or have removed from the Territory.

3. Upon an indictment being found in the cases provided in section 179.

§ 5189. s 413. The order for the recommitment of the defendant must recite generally the facts upon which it is founded and direct that the defendant be arrested by any sheriff, constable, marshal or policeman in this Territory and committed to the officer in whose custody he was at the time he was admitted to bail, to be detained until legally discharged.

Order, to contain what.

§ 5190. s 414. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any

Defendant may be arrested in any county. country [county] in the same manner as upon a warrant of arrest.

If for failure to appear for judgment, defendant must be committed. § 5191. s 415. If the order recites, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

If for other cause, he may be admitted to bail. § 5192. s 416. If the order be made for any other cause and the offence is bailable, the court may fix the amount of bail and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum fixed, which must be specified in the order.

Bail in such cases, by whom taken. § 5193. s 417. When the defendant is admitted to bail, the bail may be taken by any magistrate in the county having authority in a similar case to admit to bail, upon the holding of the defendant to answer before an indictment, or by any other magistrate designated by the court.

Undertaking, form of. § 5194. s 418. When bail is taken upon the recommitment of the defendant, the undertaking must be in substantially the following form:

An order having been made on the——day of ——, A. D. eighteen——, by the court (naming it) that A. B. be admitted to bail in the sum of——dollars, in an action pending in that court against him in behalf of the people of the Territory of Utah, upon an information, indictment or appeal (as the case may be), we, C. D. and E. F., of (stating the place of residence and occupation), hereby undertake that the above named A. B. will appear in that or any other court in which his appearance may be lawfully required, upon that information, indictment or appeal (as the case may be), and will at all times render himself amenable to its orders and process, and appear for judgment and surrender himself in execution thereof; or if he fails to perform either of these conditions, that we will pay to the people of the Territory of Utah the sum of——dollars (insert the sum in which the defendant is admitted to bail.)

Bail, qualifications and how put to. § 5195. s 419. The bail must possess the qualifications, and must be put in, in all respects, in the manner prescribed in Article 2 of this Chapter.

ARTICLE IX.

WHO MAY BE WITNESSES IN CRIMINAL ACTIONS.

SECTION.

5196 Who are competent witnesses.
 5197 Husband and wife, when not competent witnesses.

SECTION.

5198 Defendant, when not a competent witness. Failure to testify raises no presumptions against him.

§ 5196. s 420. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this act.

Who are competent witnesses.

§ 5197. s 421. Except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife are competent witnesses for or against each other, in a criminal action or proceeding to which one or both are parties.

Husband and wife, when not competent witnesses.

§ 5198. s 422. A defendant in a criminal action or proceeding cannot be compelled to be a witness against himself; but if he offer himself as a witness, he may be cross-examined by the counsel for the people the same as any other witness. His neglect or refusal to be a witness cannot in any manner prejudice him, nor be used against him on the trial or proceeding.

Failure to testify raises no presumptions against him.

CHAPTER II.

COMPELLING THE ATTENDANCE OF WITNESSES.

SECTION.

5199 Subpœna defined, and who may issue.
 5200 Subpœna, form of.
 5201 Subpœna, by whom and how served.

SECTION.

5202 Witness residing or served with a subpœna out of the district, how compelled to attend.
 5203 Disobedience to a subpœna, how punished.
 5204 Witness failing to appear, undertaking forfeited.

§ 5199. s 423. The process by which the attendance of witnesses before a court or magistrate is required, is a subpœna; it may be signed and issued by:

Subpœna defined and who may issue.

1. A magistrate before whom an information is laid, for witnesses in the Territory, either on behalf of the people or of the defendant.

2. The prosecuting attorney, for witnesses in the Territory, in support of the prosecution, or for such other witnesses as the grand jury, upon an investigation pending before them, may direct.

3. The prosecuting attorney, for witnesses in the Territory in support of an indictment, to appear before the court in which it is to be tried.

4. The clerk of the court in which an indictment is to be tried: and he must, at any time, upon application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him as clerk, for witnesses in the Territory, as the defendant may require.

Subpoena,
form of.

§ 5200, s 424. A subpoena must be substantially in the following form:

The people of the Territory of Utah to A. B.: You are commanded to appear before C. D., a justice of the peace of —precinct, in—county, (or as the case may be), at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the people of the Territory of Utah, against E. F. Given under my hand this —day of—, A. D., eighteen—.

G. H., Justice of the Peace, (or J. K., prosecuting attorney, or by order of the court, L. M., clerk, or as the case may be).

If books, papers, or documents are required, a direction to the following effect must be contained in the subpoena: "And you are required, also, to bring with you the following" (describing intelligibly the books, papers, or documents required).

Subpoena, by
whom and
how served.

§ 5201, s 425. A subpoena may be served by any person, but a peace officer must serve in his county any subpoena delivered to him for service, either on the part of the people or of the defendant, and must, without delay, make a written return of the service, subscribed by him, stating the time and place of service. The service is made by showing the original to the witness personally and informing him of its contents.

§ 5202, s 426. No person is obliged to attend as a witness before a court or magistrate out of the district where

the witness resides, or is served with the subpoena, unless the judge of the court in which the offence is triable, or a magistrate, upon an affidavit of the prosecuting attorney or prosecutor, or of the defendant or his counsel, showing that the evidence of the witness is material, and his attendance at the examination or trial necessary, shall endorse on the subpoena an order for the attendance of the witness.

Witness residing or served with a subpoena outside of district, how compelled to attend.

§ 5203. s 427. Disobedience to a subpoena, or a refusal to be sworn or to testify as a witness, may be punished by the court or magistrate as a contempt, unless he can show good cause for his non-attendance.

Disobedience to a subpoena, how punished.

§ 5204. s 428. When a witness has entered into an undertaking to appear, upon his failure to do so, the undertaking is forfeited in the same manner as undertakings of bail.

Witness undertaking to appear, undertaking forfeited.

CHAPTER III.

EXAMINATION OF WITNESSES CONDITIONALLY.

SECTION.

- 5205 Witnesses for defendant may be examined conditionally as provided in this Chapter.
 5206 In what cases defendant may apply for order.
 5207 Application, how made.
 5208 Application, to whom and when made.
 5209 Order, when granted and what to contain.
 5210 On proof of service, if prosecuting attorney be absent, examination must proceed.

SECTION.

- 5211 If facts on which order was founded be disproved, examination not to proceed.
 5212 Attendance of witnesses, how enforced.
 5213 Testimony, how taken and authenticated.
 5214 Deposition to be sealed up and transmitted to clerk.
 5215 When may be read in evidence, subject to objections.

§ 5205. s 429. When a defendant has been held to answer a charge for a public offence, he may, either before or after an indictment, have witnesses examined conditionally, on his behalf, as prescribed in this Chapter, and not otherwise.

Witnesses for defendant may be examined conditionally as prescribed in this Chapter.

March 13, 1884.

§ 5206. s 430. When a material witness for the defendant is about to leave the Territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be

In what cases defendant may apply for the order.

unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

Application,
how made.

March 18, 1884.

§ 5207. s 431. The application must be made upon affidavit, stating

1. The nature of the offence charged.

2. The state of the proceedings in the action.

3. The name and residence of the witness, and that his testimony is material to the defense of the action.

4. That the witness is about to leave the Territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

Application, to
whom and
when made.

§ 5208. s 432. The application may be made to the court during the term thereof, or to the judge in vacation and must be upon three days' notice to the prosecuting attorney.

Order, when
granted and
what to con-
tain.

§ 5209. s 433. If the court or judge is satisfied that the examination of the witness is necessary, an order must be made that the witness be examined conditionally, at a specified time and place, and that a copy of the order be served on the prosecuting attorney, within a specified time before that fixed for the examination.

On proof of
service, if
prosecuting
attorney be
absent, ex-
amination
must proceed.

§ 5210. s 434. The order must direct that the examination be taken before a magistrate named therein, and on proof being furnished to such magistrate of service upon the prosecuting attorney of a copy of the order, if no counsel appear on the part of the people, the examination must proceed.

If facts on
which order
was founded,
be disproved,
examination
not to proceed

§ 5211. s 435. If the prosecuting attorney, or other counsel, appear on behalf of the people, and it is shown to the satisfaction of the magistrate, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the Territory, or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place; otherwise it must proceed.

Attendance of
witnesses,
how enforced.

§ 5212. s 436. The attendance of the witness may be enforced by a subpoena, issued by the magistrate before whom the examination is to be taken.

Testimony,
how taken and
authenticated.

§ 5213. s 437. The testimony given by the witness must be reduced to writing, and authenticated in the same manner as the testimony of a witness taken in support of an information.

§ 5214. * 438. The deposition taken must, by the magistrate, be sealed up and transmitted to the clerk of the court in which the action is pending, or may come for trial. Deposition to be sealed up and transmitted to clerk of court.

§ 5215. * 439. The deposition, or a certified copy thereof, may be read in evidence by either party on the trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness, or infirmity, or of his continued absence from the Territory. Upon reading the deposition in evidence, the same objections may be taken to a question or answer contained therein as if the witness had been examined orally in court. When same be read in evidence.

CHAPTER IV.

EXAMINATION OF WITNESSES ON COMMISSION.

SECTION.

5216. * 440. Witness residing out of the Territory when to be examined.

5217. When defendant may apply for an order to examine, etc.

5218. Commission defined.

5219. * 441. Application, how made, to contain, what.

5220. Application, when and to whom made.

5221. Order for commission; when granted, and stay of proceedings.

5222. Interrogatories, how settled and allowed.

SECTION.

5223. Interrogatories to return of commission.

5224. Commission, how executed. Copy of this section to be annexed to commission.

5225. Commission, how returned, when delivered to an agent for that purpose.

5226. Same.

5227. When and how filed.

5228. Commission and return to be open to inspection. Copies, etc.

5229. Depositions to be read in evidence. Objections to.

§ 5216. * 440. When an issue of fact is joined upon an indictment, or before, if the court so order, the defendant may have any material witness, residing out of the Territory, examined in his behalf, as prescribed in this Chapter, and not otherwise. Witness to be examined out of the Territory, when to be examined.

§ 5217. * 441. When a material witness for the defendant resides out of the Territory, the defendant may apply for an order that the witness be examined on a commission. When defendant may apply for an order to examine, etc.

Commission
defined.

§ 5218. s 442. A commission is a process issued under the seal of the court and the signature of the clerk, directed to some person designated as commissioner, authorizing him to examine the witness upon oath on interrogatories annexed thereto, to take and certify the deposition of the witness, and to return it accordingly to the directions given with the commission.

Application,
how made, to
contain what.

§ 5219. s 443. The application must be made upon affidavit, stating:

1. The nature of the offence charged.
2. The state of the proceedings in the action.
3. The name of the witness, and that his testimony is material to the defense of the action.
4. That the witness resides out of the Territory.

Application,
when and to
whom made.

§ 5220. s 444. The application may be made to the court during the term, or to the judge in vacation, and must be upon three days' notice to the prosecuting attorney.

Order for com-
mission, when
granted and
stay of pro-
ceedings.

§ 5221. s 445. If the court or judge to whom the application is made is satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony; and the court or judge may insert in the order a direction that the trial of the indictment be stayed for a specified time, reasonably sufficient for the execution and return of the commission.

Interroga-
tories, how
settled and
allowed.

§ 5222. s 446. When the commission is ordered, the defendant must serve upon the prosecuting attorney, without delay, a copy of the interrogatories to be annexed thereto, with two days' notice of the time at which they will be presented to the court or judge. The prosecuting attorney may, in like manner, serve upon the defendant or his counsel cross-interrogatories, to be annexed to the commission with the like notice. In the interrogatories either party may insert any question pertinent to the issue. When the interrogatories and cross-interrogatories are presented to the court or judge according to the notice given, the court or judge must modify the questions so as to conform them to the rules of evidence, and must endorse upon them his allowance and annex them to the commission.

Directions as
to return of
commission.

§ 5223. s 447. Unless the parties otherwise consent, by an indorsement upon the commission, the court or judge must indorse thereon a direction as to the manner in which it must

be returned, and may in his discretion, direct that it be returned by mail or otherwise, addressed to the clerk of the court in which the action is pending, designating his name and the place where his office is kept.

§ 5224. s 448. The commissioner, unless otherwise Commission, how executed. specially directed, may execute the commission as follows:

1. He must publicly administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth and nothing but the truth.

2. He must cause the examination of the witness to be reduced to writing.

3. He must write the answers of the witness as near as possible in the language in which he gives them, and read to him each answer as it is taken down, and correct or add to it until it conforms to what he declares is the truth.

4. If the witness declines to answer a question, that fact, with the reason assigned by him for declining, must be stated.

5. If any papers or documents are produced before him and proved by the witness, the same, or copies thereof, must be annexed to the deposition subscribed by the witness and certified by the commissioner.

6. The commissioner must subscribe his name to each sheet of the deposition and annex the deposition, with the papers and documents proved by the witness, to the commission and must close it up under seal and address it as directed by the endorsement thereon.

7. If there is a direction on the commission to return it by mail, the commissioner must immediately deposit it in the nearest post office. If any other direction is made by the written consent of the parties, or by the court or judge, on the commission as to its return, he must comply with the direction. A copy of this section must be annexed to the commission. Copy of this section to be annexed to the commission.

§ 5225. s 449. If the commission and return is delivered by the commissioner to an agent, he must deliver the same to the clerk to whom it is directed, or to the judge of the court in which the indictment is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hands of the commissioner, and that it has not been opened or altered since he received it. Commission, how returned when delivered to an agent for that purpose.

§ 5226. s 450. If the agent is dead, or from sickness Same. or other casualty, unable personally to deliver the commission

and return, as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent: that the agent is dead, or from sickness or other casualty unable to deliver it: that it has not been opened or altered since the person making the affidavit received it: and that he believes it has not been opened or altered since it came from the hands of the commissioner.

When and
how filed.

§ 5227. s 451. The clerk or judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending. If the commission and return is transmitted by mail, the clerk to whom it is addressed must receive it from the post office and open and file it in his office, where it must remain, unless otherwise directed by the court or judge.

Commission
and return to
be open to in-
spection.
Copies, etc.

§ 5228. s 452. The commission and return must at all times be open to the inspection of the parties, who must be furnished by the clerk with copies of the same, or of any part thereof, on payment of his fees.

Depositions to
be read in evi-
dence.

§ 5229. s 453. The depositions taken under the commission may be read in evidence by either party on the trial, upon it being shown that the witness is unable to attend from any cause whatever: and the same objections may be taken to a question in the interrogatories or to an answer in the deposition, as if the witness had been examined orally in court.

Objections
thereto.

CHAPTER V.

INQUIRY INTO THE SANITY OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION.

SECTION.	SECTION.
5230 An insane person cannot be tried, sentenced or punished for a public offence.	5234 If defendant is committed, it exonerates his bail, etc.
5231 Doubt as to sanity of defendant, how determined. Stay of proceedings.	5235 Defendant detained in an asylum until he becomes sane. Notice then to be given to proper officer.
5232 Order of trial of the question of insanity. Charge of the court.	5236 Expenses of sending, etc., defendant to asylum where chargeable.
5233 Verdict of the jury and proceedings thereon.	

§ 5230. s 454. A person cannot be tried, adjudged to punishment, or punished for a public offence while he is insane.

An insane person cannot be tried, sentenced or punished for a public offence.

§ 5231. s 455. When an indictment is called for trial, if a doubt arises as to the sanity of the defendant, the court must order the question to be submitted to a jury; when such doubt arises, on the defendant being brought up for judgment on conviction, the court must order a jury to be summoned from the list of jurors provided by law, to inquire into the fact; and the trial of the indictment or the pronouncing of the judgment must be suspended until the question of insanity is determined by the verdict of the jury.

Doubt as to sanity of defendant, how determined.

§ 5232. s 456. The trial of the question of insanity must proceed in the following order:

Stay of proceedings.

1. The counsel for the defendant must open the case and offer evidence in support of the allegation of insanity.

2. The counsel for the people may then open their case and offer evidence in support thereof.

3. The parties may then respectively offer rebutting testimony only, unless the court, for good reason in furtherance of justice, permit them to offer evidence upon their original cause.

Order of trial of the question of insanity.

4. When the evidence is concluded, unless the case is submitted to the jury on either or both sides without argument, the counsel for the people must commence, and the

defendant or his counsel may conclude, the argument to the jury.

5. If the indictment be for an offence punishable with death, two counsel on each side may argue the case to the jury, in which case they must do so alternately. In other cases the argument may be restricted to one counsel on each side.

Charge of the
court.

6. The court must then charge the jury, stating to them all matters of law necessary for their information in giving their verdict.

Verdict of the
jury, and pro-
ceedings thereon.

§ 5233. s 457. If the jury find the defendant sane, the trial of the indictment must proceed, or judgment may be pronounced, as the case may be. If the jury find the defendant insane, the trial or judgment must be suspended until he becomes sane, and the court, if it deems his discharge dangerous to the public peace or safety, may order that he be in the meantime committed by the proper officer to a lunatic asylum, and that upon his becoming sane, he be re-delivered to the proper officer.

If defendant is
committed, it
exonerates his
bail, etc.

§ 5234. s 458. The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitles a person, authorized to receive the property of the defendant, to a return of any money he may have deposited instead of bail.

Defendant
detained in an
asylum until
he becomes
sane.
Notice then to
be given to
proper officer.

§ 5235. s 459. If the defendant is received into an asylum, he must be detained there until he becomes sane. When he becomes sane, the person having him in charge must give notice of that fact to the proper officer, who must thereupon, without delay, bring the defendant from the asylum, and place him in proper custody until he is brought to trial or judgment, as the case may be, or is legally discharged.

Expense of
sending, etc.,
defendant to
asylum,
where charge
able.

§ 5236. s 460. The expenses of sending the defendant to the asylum, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the offence was committed; but the county may recover them from the estate of the defendant, if he have any, or from a relative legally bound to care for him, or from the county in which he was a resident.

CHAPTER VI.

COMPROMISING CERTAIN PUBLIC OFFENCES BY LEAVE OF THE COURT.

SECTION.

5237 Certain offences for which the party has a civil action may be compromised.

5238 Compromise to be by permission of the court. Order thereon a bar to another prosecution.

SECTION.

5239 No public offence to be compromised except as herein provided.

§ 5237. s 461. When a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the offence has a remedy by a civil action, the offence may be compromised as provided in the next section, except when it is committed:

1. By or upon an officer of justice, while in the execution of the duties of his office.
2. Riotously.
3. With an intent to commit a felony.

§ 5238. s 462. If the party injured appears before the court to which the depositions are required to be returned, at any time before trial, and acknowledges that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the same offence.

§ 5239. s 463. No public offence can be compromised, nor can any proceeding or prosecution for the punishment thereof upon a compromise, be stayed except as provided in this Chapter.

CHAPTER VII.

DISMISSAL OF THE ACTION BEFORE OR AFTER INDICTMENT, FOR WANT OF PROSECUTION OR OTHERWISE.

SECTION.

5240 When action may be dismissed.

5241 Action may be continued and defendant discharged from custody, when and how.

5242 If action dismissed, defendant to be discharged, etc.

SECTION.

5243 Court may, on its own motion, or on application of the prosecuting attorney, order action dismissed.

5244 *Nolle prosequi* abolished.

5245 Dismissal a bar in misdemeanor but not in felony.

When action
may be dis-
missed

§ 2510. s 464. The court, unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed in the following cases:

1. When a person has been held to answer for a public offence, if an indictment is not found against him at the next term of the court at which he is held to answer.

2. If a defendant whose trial has not been postponed upon his application, is not brought to trial at the next term of the court in which the indictment is triable, after it is found.

Action may be
continued and
defendant dis-
charged from
custody, when
and how.

§ 5241. s 465. If the defendant is not indicted or tried as provided in the last section, and sufficient reason therefor is shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody on his own undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

If action dis-
missed, de-
fendant to be
discharged,
etc.

§ 5242. s 466. If the court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom; or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

Court may on
its own mo-
tion or on ap-
plication of
prosecuting
attorney
order action
dismissed.

§ 5243. s 467. The court may, either of its own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

§ 5244. s 468. The entry of a *nolle prosequi* is abolished *Nolle prosequi* abolished. and no prosecuting attorney can discontinue or abandon a prosecution for a public offence, except as provided in the last section.

§ 5245. s 469. An order for the dismissal of the action Dismissal a bar in misdemeanor but not in felony as provided in this Chapter, is a bar to any other prosecution for the same offence, if it is a misdemeanor; but is not a bar if the offence is a felony.

CHAPTER VIII.

PROCEEDINGS AGAINST CORPORATIONS.

SECTION.

5246 Summons upon information, etc. against; by whom issued and when returnable.
5247 Summons, form of.
5248 When and how served.
5249 Examination of the charge.
5250 Certificate of the magistrate and return thereof with the depositions.

SECTION.

5251 If magistrate certify that there is sufficient cause, grand jury to investigate, etc.
5252 Appearance and plea.
5253 Fine on conviction, how collected.

§ 5246. s 470. Upon an information or complaint Summons upon information, etc., against; by whom issued, and when returnable. against a corporation, the magistrate must issue a summons, signed by him, with his name of office, requiring the corporation to appear before him at a specified time and place to answer the charge, the time to be not less than ten days after the issuing of the summons.

§ 5247. s 471. The summons must be substantially in the following form: Summons, form of.

County of (as the case may be). The people of the Territory of Utah to the (naming the corporation).

You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer a charge made against you upon the information of A. B., for (designating the offence generally). Dated at—this—day of—eighteen—. G. H., Justice of the Peace (or as the case may be).

§ 5248. s 472. The summons must be served at least

When and how served. five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president or other head of the corporation, or to the secretary, cashier or managing agent thereof.

Examination of the charge. § 5249. s 473. At the appointed time in the summons, the magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as these proceedings are applicable.

Certificate of the magistrate, and return thereof with the depositions. § 5250. s 474. After hearing the proofs, the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offence charged, and must return the deposition and certificate, as prescribed in section 116.

If magistrate certify that there is sufficient cause grand jury to investigate, etc. § 5251. s 475. If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offence charged, the grand jury may proceed thereon as in case of a natural person held to answer.

Appearance and plea. § 5252. s 476. If an indictment is found, the corporation may appear by counsel to answer the same. If it does not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

Fine on conviction, how collected. § 5253. s 477. When a fine is imposed upon a corporation, on conviction, it may be collected by virtue of the order imposing it, by the proper officer, out of its real and personal property, in the same manner as upon an execution in a civil action.

CHAPTER IX.

ENTITLING AFFIDAVITS.

SECTION.

5254 Affidavits defectively entitled valid.

Feb. 22, 1878.
Affidavits defectively entitled valid.

§ 5254. s 478. It is not necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment, or appeal in which it is made.

CHAPTER X.

ERRORS AND MISTAKES IN PLEADINGS AND OTHER PROCEEDINGS.

SECTION.	SECTION.
5255 Errors and mistakes, when not material.	5257 This act takes effect March 10, 1878.
5256 Acts and parts of acts inconsistent with this act repealed.	
<p>§ 5255. s 479. Neither a departure from the form or mode prescribed by this act in respect to any pleading or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right.</p>	
<p>§ 5256. s 480. "An act providing for appeals to the supreme court," approved January 18th, 1861, and "An act regulating the mode of procedure in criminal cases," approved January 21st, 1853, and that all acts and parts of acts inconsistent with the provisions of this act be, and the same are, hereby repealed.</p>	
<p>§ 5257. s 481. This act shall be in force from and after the tenth day of March, eighteen hundred and seventy-eight.</p>	

CONCERNING COSTS AND FEES OF COURTS, AND APPROPRIATIONS THEREFOR.

[Approved January 21, 1859.]

SECTION.	SECTION.
5258 When complainant to pay costs.	5260 Duty of court when prisoner cannot pay fine.
5259 When a fine is imposed court may order imprisonment.	
<p>§ 5258. (2266) In all cases of criminal prosecution where the complainant is not an eye-witness of the crime alleged, and the defendant is not found guilty on trial, the complainant shall pay the costs, unless probable cause shall have been</p>	

shown in said trial: and all persons found guilty of crime upon trial, shall pay the costs, except where the party is insolvent, in which case a county court may authorize the payment of said costs, or such part thereof as their discretion shall dictate, out of the county treasury: *Provided*, That a county court shall not appropriate more than one-third of the county revenue to defray the expenses of courts for any one year: and that, in all appropriations of a county court for court expenses, that of dieting prisoners shall have the precedence.

[Approved February 19, 1869.]

When a fine is imposed court may order imprisonment.
Feb. 19, 1869.

§ 5259. ⁽²³⁶⁴⁾ In all cases where, by law, the courts are authorized to assess a fine for any public offence, and on due trial a fine shall be assessed, the court is hereby authorized to order the person convicted to be imprisoned until such fine and costs are paid or secured to be paid to the satisfaction of the court: *Provided*, That the term courts in this act shall also include courts held by mayors, aldermen and justices of the peace of incorporated towns and cities.

Duty of court when prisoner cannot pay fine.

§ 5260. ⁽²³⁶⁵⁾ It shall be the duty of the court in all cases where any person is actually imprisoned, pursuant to its order for the non-payment of any fine, on being satisfied that such convicted person is unable to pay such fine, or to secure its payment, to make such order in the premises as justice and equity may require; *Provided*, Such person shall not be detained in prison for a longer period than will be sufficient to pay such fine and costs at the rate of one dollar per day, and the officer having such person in custody may cause him to be kept at labor during the usual laboring hours of each laboring day.

INSANE CONVICTS.

SECTION.

5261 Insane to be removed to asylum,
manner of.

5262 How released; time of con-
finement deducts from sen-
tence.

SECTION.

5263 Cost of proceeding, how paid.

5264 Care of, how paid.

§ 5261. s 1. Whenever any person confined in the Ter-
ritorial penitentiary or any county jail under sentence of any
court of this Territory, manifests symptoms of insanity of a
homicidal, suicidal, incendiary or violent character, it shall be
the duty of the United States marshal, or sheriff of the
county, to make complaint under oath to the judge of any
district or probate court within this Territory, setting forth
the facts connected with the conviction, sentence and insanity
of said person, and the judge of said district or probate
court shall cause such person to be brought before him, and
he shall summon to appear before him at the same time and
place two or more witnesses who well knew the accused dur-
ing the time of alleged insanity, who shall testify under oath
as to the conversation, manners and general conduct upon
which said charge of insanity is based; and shall also cause
to appear before him at the same time and place two or more
practicing physicians in medicine, before whom the judge
shall examine the charge, and if after a hearing of the case
and a personal examination of the alleged insane person, the
said physicians shall certify on oath that the person examined
is insane, and the case is of a recent or curable character, or
that the said insane person is of a homicidal, suicidal, or in-
cendiary disposition, or that from any other violent symptoms
that said insane person would be dangerous to his or her own
life, or to the lives or property of others, if at large, and if
the judge shall be satisfied that the facts revealed in the ex-
amination establish the existence of the insanity of the per-
son accused and that it is of a recent or curable nature, or of
a homicidal or incendiary character, or that from the violence
of the symptoms the said insane person would be dangerous
to his or her own life or the lives or property of others, if at

March 11, 1886
Insane con-
victs to be re-
moved to asy-
lum.
Manner of
proceeding in
such cases,
examination,
etc.

large, he shall direct the aforesaid marshal, or sheriff, to convey to, and place in charge of the officers of the Territorial insane asylum such insane person, and shall transmit a copy of the complaint, commitment and physicians' certificate, and upon the receiving of the same the officers of said Territorial insane asylum shall receive and care for said insane person as other patients.

How released
from asylum.

§ 5262. s 2. If at any time before the expiration of the sentence, said insane person shall be cured, the board of directors of said asylum shall submit a statement of the facts of the commitment and cure of said person to the district or probate court that committed said person, and the judge of said court shall cause said person to be brought before him, and all necessary witnesses to be examined in order to ascertain the mental condition of said person. If upon examination by said judge, said person is found sane, he shall direct the marshal or sheriff to take said person to the Territorial penitentiary or county jail, where he shall be confined and serve out the remainder of his sentence. The time of confinement in said asylum shall be deducted from the term of imprisonment of said person. But if the sentence of said person expires during the period of his insanity and while confined in the Territorial insane asylum and he subsequently is cured, he shall be released from said asylum.

Time of confinement to be
deducted from
term of such
sentence.

Cost of pro-
ceeding in
each case,
how paid.

§ 5263. s 3. All costs incurred in the aforesaid examinations when the person is confined in the penitentiary shall be paid by the Territory of Utah, and all costs incurred in examining persons confined in the county jail shall be paid by the county, and the clerk of the district court before which examinations were conducted, shall certify the costs to the auditor of public accounts who is hereby authorized to draw his warrant on the Territorial treasurer for the amount of said costs, and the clerk of the probate court before which said examinations were conducted, shall certify the costs to the county court of the county.

Care and keep-
ing of, how
paid.

§ 5264. s 4. The costs for the care and keeping of all insane persons under the provisions of this act shall be paid by the Territory of Utah, and upon presentation of said costs, duly certified by the directors of said asylum, to the auditor of public accounts, he shall draw his warrant upon the Territorial treasurer for said amount.

GRATUITIES TO DISCHARGED CONVICTS.

SECTION.

5265 Discharged, to receive fifteen dollars.

SECTION.

5266 How drawn.

§ 5265. s 1. That each person convicted under the Territorial statutes and sentenced to imprisonment in the Utah penitentiary for a term of one year or longer, shall, upon his or her release therefrom, be entitled to receive from the Territorial treasury the sum of fifteen dollars.

Appropriation for persons discharged from penitentiary. March 11, 1886.

§ 5266. s 2. Upon the expiration of the term of imprisonment of each convict, the warden of the penitentiary shall make out and file with the auditor of public accounts a certificate properly numbered, showing the date of its issuance, the prisoner for whom the money is drawn, the offence for which he was convicted, the date of his admission to the penitentiary, and the day his term of imprisonment expired. The auditor shall, upon the filing of such certificate, issue a warrant upon the Territorial treasury for the payment of said money; *Provided*, That of said money the warden shall expend at least ten dollars in the purchase of clothing for said prisoner.

Feb. 21, 1888. Certificate to be made by warden of penitentiary and filed with auditor of public accounts.

Duty of auditor.

REWARD TO CONVICTS.

SECTION.

5267 Warden to keep a convict's record.

5268 Convicts entitled to deduction from sentence.

5269 Amount of deduction.

SECTION.

5270 Same.

5271 When earned time forfeited, appeal to Governor, his power to restore.

5272 When act takes effect.

§ 5267. s 1. It shall be the duty of the warden of the Utah penitentiary to keep a record in which he shall enter a statement of every infraction of the prison rules committed

Warden to keep record of conduct of. March 11, 1886.

by any of the convicts. At the end of each month, he shall certify upon said record to the good conduct of each convict who has not been guilty of an infringement of any of the rules.

When entitled
to a reduction
from period of
sentence

§ 5268. s 2. Each convict sentenced for any period less than life, who has not been guilty of a breach of the rules of discipline of the prison, shall be entitled to a reduction of the period of sentence, as hereinafter provided; and when the full term of imprisonment for which any convict has been sentenced by the court shall be diminished by his good conduct under the provisions of this act, so that the term of imprisonment has thereby expired, the warden of the penitentiary shall immediately furnish the secretary of the Territory a certificate stating the length of time his term of imprisonment has been so diminished, and no objections appearing to the Governor, the convict shall be released.

Amount of de-
duction.

§ 5269. s 3. The following deductions shall be allowed to convicts for good conduct: From the term of sentence of three months, fifteen days; from a term of six months, thirty days; from a term of one year, two calendar months; thus a one-year convict shall be entitled to a discharge at the expiration of ten months. If the term be for any time greater than one year, the service for the second year, or portion thereof, shall begin at the expiration of ten months, which shall stand for a service of one year. On a second year the convict shall be entitled to a reduction of three calendar months; thus a service of one year and seven months shall be sufficient for a term of two years. The service of a third year, or fraction thereof, shall begin at the expiration of one year and seven months; four calendar months shall be allowed on said third year; thus a service of two years and three months shall be sufficient for a term of three years. For a term of four years, the service of the fourth, or portion thereof, shall begin at the expiration of two years and three months, and on the fourth year five months shall be allowed, thus a service of two years and ten months shall be sufficient for a term of four years. In a term of five years the service of the fifth year, or portion thereof, shall begin at the expiration of two years and ten months, and from the fifth year there shall be a deduction of six calendar months; thus a service of three years and four months shall be sufficient for

a term of five years. For all time in excess of five years there shall be a deduction of one-half for such time.

§ 5270. s 4. In all terms of sentence terminating inter-^{same.}mediately between those terms hereinbefore specified, the deduction shall be proportionate to those named in the foregoing section.

§ 5271. s 5. For a violation of the rules, the convict shall be liable to forfeit all of his reduction time for the month in which the infraction occurs. If the offence or offences be aggravated or frequent, the warden or other officer in charge shall have power to punish the offender by depriving him of all or any portion of his reduction time earned previous to the commission of said offence or offences. *Pro-*^{When earned time is forfeited}
vided, That any convict who may feel himself aggrieved by the action of the warden or other officer in charge, in such cases, shall have the right to appeal, in writing to the Governor of the Territory, which writing shall include a statement of facts and the evidence and reasons of the appellant for considering himself unjustly dealt with. Should the Governor, upon investigation, deem the complaint of the convict well grounded, he shall have power to credit back to said convict the earned reduction time of which he has been deprived.^{Appeal to the Governor, when.}

§ 5272. s 6. This act shall take effect forthwith after its passage and approval, and all unexpired terms of sentence then pending shall be treated in accordance with the foregoing provision.^{When act takes effect.}

FUGITIVES FROM JUSTICE.

SECTION.

5273 The Governor may offer rewards in certain cases.

5274 The Governor may appoint agent to demand fugitives from justice.

5275 U. S. District attorney to investigate when demand is made upon the Governor by State or other Territory.

5276 The Governor to issue warrant to return prisoner to other Territory or State.

SECTION.

5277 Warrants may be issued when and by whom.

5278 When persons may be held to await warrants from the Governor.

5279 Failing to give surety may be committed to prison.

5280 When person may be discharged

5281 Complainant to be liable for costs and charges.

The Governor may offer rewards on certain cases.

March 13, 1884.

§ 5273. § 1. The Governor may offer a reward, not exceeding five hundred (500) dollars, payable out of the Territorial treasury, for the apprehension:

1. Of any convict who has escaped from the Territorial penitentiary; or,

2. Of any person, who has committed, or is charged with the indictment with the commission of an offence punishable with death.

The Governor may appoint agents to demand fugitives from justice.

§ 5274. § 2. The Governor of this Territory may, in any case authorized in the Constitution and laws of the United States, appoint agents to demand of the executive authority of any State or other Territory, or from the executive authority of any foreign government, any fugitive from justice and the compensation of such agents shall be a charge against the Territory.

U. S. Dist. attorney to investigate when demand is made upon the Governor by State or other Territory.

§ 5275. § 3. Whenever a demand shall be made upon the Governor of this Territory, by the Governor of any State or other Territory, in any case authorized by the Constitution and laws of the United States, for the delivery over of any person charged in such State or Territory, with any crime, the United States district attorney when required by the Governor, shall forthwith investigate the grounds of demand, and report to the Governor all material facts which may come to his knowledge, as to the situation and circumstances of the person so demanded, and especially whether he is held in custody, or is under recognizance to answer for

any offence against the laws of this Territory, or of the United States, or by virtue of any civil process, and also whether such demand is made conformably to law, so that such person ought to be delivered up.

§ 5276. s 4. If the Governor shall be satisfied that the demand is conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of the Territory, authorizing the agents who make such demand, either forthwith, or at such time as shall be designated in the warrant, to take and transport such person to the line of this Territory, at the expense of such agents, and shall also by such warrants, require the civil officers within this Territory, to afford all needful assistance in the execution thereof.

The Governor
to issue war-
rant to fetch
prisoner, to
other Terri-
tory of State,
where.

§ 5277. s 5. Whenever any person shall be found within this Territory, charged with any offence committed in any State or other Territory, and liable by the Constitution and laws of the United States to be delivered over upon the demand of the Governor of such State or other Territory, any court or magistrate authorized to issue warrants in criminal cases may, upon complaint on oath, setting forth the offence and such other matters as are necessary to bring the case within the provisions of law issue a warrant to bring the person so charged before the same or some other court or magistrate, within this Territory, to answer to such complaint as in other cases.

Warrant may
be issued,
which, said by
whom.

§ 5278. s 6. If, upon the examination of the person charged, it shall appear to the court or magistrate that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the Governor, he shall, if not charged with a capital crime, be required to recognize, with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain the warrant of the Governor, and to abide the order of such court or magistrate in the premises.

When persons
may be held to
answer warrants
from the Gov-
ernor.

§ 5279. s 7. If such person shall not recognize, or if he shall be charged with a capital crime, he shall be committed to prison, and there detained [until] such day, in like manner as if the offence charged had been committed within this Territory, and if the person so recognizing shall fail to appear according to the condition of this recognizance, he shall be defaulted, and the same proceedings shall be had

Failing to give
security, may
be committed
to prison.

as in the case of other recognizances entered into before such court or magistrate.

When person
may be dis-
charged.

§ 5280. s 8. If the person so recognized or committed shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he shall be demanded by some person authorized by the warrant of the Governor to receive him, or unless the court or magistrate shall see cause to commit him, or to require him to recognize anew for his appearance at some other day; and if when ordered, he shall not so recognize, he shall be committed and detained as before; *Provided*, That whether the person so charged shall be recognized, committed, or discharged, any person authorized by the warrant of the Governor may, at all times, take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

Proviso

Complainant
to be liable for
costs and
charges when,
etc.

§ 5281. s 9. The complainant in any such case shall be answerable for all the actual costs and charges, and for the support in prison of any person so committed, to be paid weekly, or otherwise, as may be ordered by the court or magistrate; and if the charge for his support in prison shall not be so paid, the jailor may, on the failure of the complainant, discharge such person from his imprisonment.

OF THE WRIT OF HABEAS CORPUS.

SECTION.	SECTION.
5282 Petition for writ of habeas corpus; what to contain.	5293 Defendant may be arrested.
5283 Condition on which writ may be granted.	5294 Defect of form.
5284 By what courts may be granted.	5295 Imprisonment and fine.
5285 Application must be made to nearest judge.	5296 Defendant's answer.
5286 Form of writ.	5297 Judge may be fined and imprisoned.
5287 Disallowance of writ.	5298 Plaintiff to be retained in custody.
5288 Endorsement "by the habeas corpus act."	5299 Plaintiff may be absent at time of trial.
5289 Writ may be issued without application.	5300 Proceedings of the court or judge.
5290 Any person may be appointed to serve writ.	5301 Fine and imprisonment of defendant.
5291 Mode of serving the writ.	5302 Fine of officer.
5292 Writ may be served upon any person holding prisoner.	5303 Sureties in case of bail; witness.
	5304 Civil suit for damages.

§ 5282. ⁽¹¹²⁷⁾ The petition for a writ of habeas corpus must be in writing, and be sworn to, and signed by the prisoner, or some person on his, her, or their behalf, setting forth the facts concerning his, her, or their imprisonment, and in whose custody he, she, or they are detained, and shall be accompanied by a copy of the warrant or warrants of commitment, or an affidavit that the said copy had been demanded of the person or persons in whose custody the prisoner or prisoners are detained, and by him or them refused, or neglected to be given.

§ 5283. ⁽¹¹²⁸⁾ Upon the presentation of the foregoing petition to any court having jurisdiction, the writ of habeas corpus shall be awarded, unless it shall appear from the petition itself, or the documents annexed, or the showing of the petitioner, the party so applying would not be entitled to any relief.

§ 5284. ⁽¹¹²⁹⁾ The writ of habeas corpus may be allowed by the supreme, district, or probate court, or any judge thereof, and may be served in any part of the Territory.

§ 5285. ⁽¹¹³⁰⁾ Application for this writ must be made to the court or judge most convenient in point of distance to the applicant, and the more remote court or judge, if applied

Petition for writ of habeas corpus, what to contain. Feb. 2, 1852.

Condition on which writ may be granted.

By what courts may be granted.

Application
must be made
to nearest
court or judge.

to for the writ, may refuse the same, unless a sufficient reason be adduced in the petition for not making application to the more convenient court or judge.

Form of writ

§ 5286. ⁽¹¹³⁾ When the writ shall be awarded, it shall appear under the seal of court issuing the same, or if it be issued by any judge it shall be signed by him, and shall be substantially in the following words, to-wit:

Territory of Utah, } To the marshal, or sheriff, officer,
County of—— } or to A. B., (as the case may be):

You are hereby commanded to have the body of C. D., by you detained as alleged, before the court, or before me, E. F., judge, etc., (as the case may be), at——, on——, or forthwith, after being served with this writ, to be dealt with according to law, and to abide such order as the court or judge shall make in the premises, and have you then and there this writ, with a return of your doings in the premises.

Disallowance
of writ.

§ 5287. ⁽¹¹⁴⁾ When the writ is disallowed, the court or judge shall cause the reasons of said disallowance to be appended to the petition, and returned to the person applying for the writ.

Endorsement,
"By the habeas
corpus act."

§ 5288. ⁽¹¹⁵⁾ To the intent that no officer, sheriff, jailor, constable, or other person or persons whatsoever, upon whom such writ shall be served, may pretend ignorance thereof, such writ or copy thereof shall be indorsed with the following words: "By the Habeas Corpus Act," and all persons upon whom such writs shall be served, holding said prisoner or prisoners, shall make return of such writ and shall bring or cause to be brought the body or bodies of such person or persons before the court or judge issuing said writ according to the requirements of the same.

Writ may as-
sue without
application.

§ 5289. ⁽¹¹⁶⁾ Whenever the court or judge authorized to grant this writ, has evidence that any person within the jurisdiction of such court or judge is unjustly imprisoned or restrained of his liberty, it is the duty of each court or judge to issue or cause to be issued, the writ as aforesaid, though no application be made therefor.

Any person
may be ap-
pointed to
serve writ.

§ 5290. ⁽¹¹⁷⁾ The writ may be served by the officer or by any other person appointed for that purpose by the court or judge by whom it is issued or allowed. If served by any other person than the officer, he possesses the same power and is liable to the same penalty for a non-performance of his duty as though he were the officer.

§ 5291. ⁽¹¹³⁶⁾ The proper mode of service is by leaving Mode of serving writ. the original writ with the defendant or person holding or detaining such plaintiff or prisoner and preserving a copy on which to make the return of service.

§ 5292. ⁽¹¹³⁷⁾ If the defendant cannot be found, or if he Writ may be served upon any person holding prisoner. have not the plaintiff in custody, the service shall be made upon any person having the plaintiff in custody, in the manner and with the same effect as though he had been made defendant therein.

§ 5293. ⁽¹¹³⁸⁾ If the defendant conceal himself, or re- Defendant may be arrested. fuse admittance to the person attempting to serve the writ, or if he attempt wrongfully to carry the person out of the county or Territory after service of the writ as aforesaid, the officer, or the person who is attempting to serve, or who has served the writ as above contemplated, is authorized to arrest the defendant or other person so resisting and bring him or them together with the plaintiff forthwith before the officer or court before whom the writ is made returnable. In order to make such arrest, the officer or other person having the writ possesses the same power to execute the same as is given to a sheriff for the arrest of a person charged with felony.

§ 5294. ⁽¹¹³⁹⁾ The writ of habeas corpus must not be Defect of form. disobeyed for any defect of form or misdescription of the plaintiff or defendant; *Provided*, Enough is stated to show the meaning and intent of the writ. Service being made in any mode, the defendant must appear at the proper time and place and answer the petition. He must also bring the body of the plaintiff or show good cause for not doing so; to get possession of a plaintiff's person, when there is no person appearing to have him in charge or custody, the same power is given to the officer or person having the writ as is given to the sheriff for the arrest of a person charged with felony.

§ 5295. ⁽¹¹⁴⁰⁾ A wilful failure to comply with the re- Imprisonment and fine. quisitions of this act renders the defendant or offending party liable to be attached for a contempt and to be imprisoned until a compliance is obtained and also subjects him to a forfeiture of one thousand dollars to the party thereby aggrieved.

§ 5296. ⁽¹¹⁴¹⁾ The defendant in his answer must state Defendant's answer. plainly and unequivocally whether he then has, or at any time has had the plaintiff under his control and restraint, and, if so, the cause thereof. If he has transferred him, he must

state the fact, and to whom, and the time thereof, as well as the reason or authority therefor.

Judge may be
fined and im-
prisoned.

§ 5297. ⁽¹¹⁴²⁾ Any judge, whether acting individually or as a member of the court, who wrongfully and wilfully refuses to award such writ whenever proper application for the same is made, shall forfeit and pay the sum of one thousand dollars, which may be recovered by an action of debt for the use of the Territory: and may be imprisoned for a term not exceeding one year.

Plaintiff to be
retained in
custody.

§ 5298. ⁽¹¹⁴³⁾ Until the sufficiency of the cause of restraint is determined, the defendant may retain the plaintiff in his custody and may use all necessary and proper means for that purpose.

Plaintiff may
be absent at
time of trial.

§ 5299. ⁽¹¹⁴⁴⁾ The plaintiff in writing, or by his attorney, may waive his right to be present at the trial, in which case the proceedings may be had in his absence. The writ in such cases will be modified accordingly. If no sufficient, just, legal cause of detention is shown, the plaintiff must be discharged.

Proceedings
of the court or
judge.

§ 5300. ⁽¹¹⁴⁵⁾ Upon the return of any writ of habeas corpus, the court or judge shall, after having given sufficient notice, proceed in a summary manner to settle the said facts, by hearing the testimony and arguments, as well of all parties interested civilly, if any there be, as of the prisoner or prisoners, and the person or persons who hold him, her or them in custody: and shall dispose of the prisoner or prisoners as the case may require, in all cases where the imprisonment is for a criminal offence and there is not sufficient cause for discharge: and, although the commitment may have been informally made or without due authority, or the process may have been executed by a person not duly authorized, the court may make a new commitment, or admit the party to bail, if the case be bailable.

Fine and im-
prisonment of
defendant.

§ 5301. ⁽¹¹⁴⁶⁾ Disobedience to any order of discharge, or attempt to elude the service of the writ of habeas corpus, or to avoid the effect thereof, subjects the defendant to a fine of one thousand dollars and imprisonment for the term of one year: and any person knowingly aiding and abetting in any such act, shall be subject to the like punishment.

Fine of officers

§ 5302. ⁽¹¹⁴⁷⁾ Any officer refusing to deliver a copy of any legal process by which he detains the plaintiff in custody

to any person who demands such copy for the purpose of taking out a writ of habeas corpus, shall forfeit not exceeding two hundred dollars to the person so detained.

§ 5303. ⁽¹¹⁸⁾ All persons admitted to bail on habeas corpus shall enter recognizance, with sufficient sureties, in such sum as the court shall direct, having regard to the circumstances of the plaintiff and the nature of the offence, conditioned for his, her or their appearance at the next term of the court to be holden in the county where the offence was committed, or where the same is to be tried. And all material witnesses shall also be required to enter recognizance to appear at the same time and place and not depart therefrom without leave. All such papers must be filed in the clerk's office where the same is made returnable. ^{sureties in case of bail, witnesses.}

§ 5304. ⁽¹¹⁹⁾ The recovery of any penalties incurred by reason of the provisions of this act shall be no bar to a civil suit for damages. ^{civil suit for damages.}

PART FOURTEENTH.

CRIMINAL PROCEDURE IN JUSTICES' COURTS.

AN ACT REVISING THE PROCEEDINGS IN JUSTICES' COURTS, AND PROVIDING
FOR APPEALS TO DISTRICT COURTS IN CRIMINAL CASES.

CHAPTER I.

COMPLAINT, WARRANT, PLEA AND CHANGE OF VENUE.

SECTION.	SECTION.
5305 How proceedings and actions may be commenced.	5311 When change of place of trial may be had.
5306 Warrant to be issued, form of.	5312 When change of place of trial is ordered justice must transmit papers, etc.
5307 Docket must be kept.	5313 Trial may be postponed.
5308 Kind of pleas to a complaint.	5314 Defendant must be present.
5309 Pleas must be oral and entered in docket, court may hold defendant to answer, when.	5315 Defendant may demur, when.
5310 When court must proceed to try the case.	5316 If demurrer is sustained new complaint must be filed.
	5317 How officer must serve warrant.

How proceedings and actions may be commenced
March 13, 1884.

§ 5305. s 1. All proceedings and actions before a justice's court for a public offence of which such courts have jurisdiction, may be commenced by complaint under oath, setting forth the offence charged with such particulars of time, place, person and property as to enable the defendant to understand distinctly the character of the offence complained of and to answer the complaint. The justice must note the time of filing the complaint by indorsement thereon; *Provided*, That police officers on duty may arrest any offender at the time or immediately after the commission of the offence and bring him before the magistrate who may direct his trial or examination to proceed, though no complaint has been filed; *Provided further*, That when a defendant is

Proviso

arrested without warrant as provided in this section, a sworn Additional proviso. complaint must be immediately filed with the magistrate, or an accusation made and entered on the minutes, specifying the charge against the defendant, as provided in this section.

§ 5306. s 2. If the justice of the peace is satisfied that Warrant to be issued. the offence complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form:

Territory of Utah, }
County of——— }

Form of warrant.

“The people of the Territory of Utah to any sheriff, constable, marshal or policeman in this Territory: Complaint upon oath having been made this day made before me———, justice of the peace, by C. D. that the offence of (designating it generally) has been committed, and accusing E. F. thereof; you are therefore commanded to arrest the above named E. F. and bring him before me forthwith, at (naming the place.)

Witness my hand at———, this———day of———, A. D. 18——.

A. B., Justice of the Peace.”

§ 5307. s 3. A docket must be kept by the justice of the peace, in which must be entered each action, and the proceedings of the court therein. Docket must be kept.

§ 5308. s 4. There are three kinds of pleas to a complaint; a plea of: Kind of pleas to a complaint.

1. Guilty.

2. Not guilty.

3. A former judgment of conviction or acquittal of the offence charged, which may be pleaded either with or without the plea of not guilty.

§ 5309. s 5. Every plea must be oral and entered in the minutes. If the defendant pleads guilty, the court may, before entering such plea or pronouncing judgment examine witnesses to ascertain the gravity of the offence committed; and if it appear to the court that a higher offence has been committed than the offence charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against him by the grand jury. Pleas must be oral and entered in the minutes.

§ 5310. s 6. Upon a plea other than a plea of guilty, if the defendant waive a trial by jury, and an adjournment or When court must proceed to try the case.

change of venue is not granted, the court must proceed to try the case.

When change of the place of trial may be had.

§ 5311. s 7. A change of the place of trial may be had at any time before the trial commences:

1. When it appears from the affidavit of the defendant that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before the justice about to try the case, by reason of the prejudice or bias of such justice, the cause must be transferred to another justice of the same or another precinct in the same county, or to another justice of the same city.

2. When it appears by affidavit that the defendant cannot have a fair and impartial trial, by reason of the prejudice of the citizens of the precinct, the cause must be transferred to a justice of a precinct in the same county where the same prejudice does not exist.

When change of place of trial is ordered justice must transmit papers, etc.

§ 5312. s 8. When a change of the place of trial is ordered, the justice must transmit to the justice before whom the trial is to be had all the original papers in the cause, with a certified copy of the minutes of his proceedings; and upon receipt thereof, the justice to whom they are delivered must proceed with the trial in the same manner as if the proceeding or action had been originally commenced in his court.

Trial may be postponed.

§ 5313. s 9. Before the commencement of a trial in a justice's court, either party may upon good cause shown, have a reasonable postponement thereof.

Defendant must be present.

§ 5314. s 10. The defendant must be personally present before the trial can proceed.

Defendant may demur, when.

§ 5315. s 11. The defendant may demur to the complaint when it appears upon the face thereof:

1. That it does not conform to the requirements of section 1 of this act.

2. That the facts stated do not constitute a public offence.

If demurrer is sustained, new complaint must be filed.

§ 5316. s 12. If the demurrer be sustained a new complaint must be filed within such time not exceeding one day as the justice may name; if such new complaint be not filed the defendant must be discharged.

§ 5317, s 13. The officer who receives the warrant must serve the same by arresting the defendant, if in his power to do so, and bring him without unnecessary delay before the justice who issued the same.

How officer must serve warrant.

CHAPTER II.

FORMATION OF THE JURY

SECTION.

5318 When trial by jury deemed to be waived.

5319 Jury to consist of how many persons.

5320 Court may issue venire.

5321 Jurors may be summoned orally

5322 Officer must return venire to court with endorsement.

5323 Jurors may be summoned from any part of incorporated city.

SECTION.

5324 Who is not competent to act as juror.

5325 Who is exempt from liability to act as juror.

5326 Person exempt may serve, when.

5327 When juror can be excused.

5328 What persons exempt must state under oath.

5329 Challenge to jurors.

§ 5318, s 16. A trial by jury shall be deemed to be waived unless a jury be demanded by the defendant. If he demand a jury, it shall be formed in the manner provided in this Chapter.

When trial by jury deemed to be waived.

§ 5319, s 17. The jury in a criminal case tried before a justice of the peace, shall consist of six persons having the following qualifications:

Jury to consist of six persons. Qualifications of.

1. They shall be male citizens of the United States over the age of twenty-one years; and

2. Able to read and write the English language; and

3. Residents of the precinct at least six months before being actually called to serve; and

4. Taxpayers in the Territory; and

5. Of reputed sound mind and discretion and not so disabled in body as to be unable to serve.

§ 5320, s 18. The court must issue a venire to the sheriff, constable, or city marshal of the jurisdiction, requir-

the court may issue a venire requiring the officer to summon persons to act as jurors.

ing such officer to summon as many persons, competent to act as jurors as the court may deem necessary; and from the persons so summoned shall be selected the persons to try the case; *Provided*, That if the number first summoned shall become exhausted by challenge or otherwise, before the jury is completed, the court must issue another venire requiring the officer to summon such additional number as may be deemed necessary, and so on until the jury is completed.

§ 5321. s 19.

Such jurors must be summoned from the persons resident of the city or precinct, competent to serve as jurors, by notifying them orally that they are so summoned and of the time and place at which their attendance is required, but no juror shall be summoned from the bystanders.

§ 5322. s 20.

The officers summoning such jurors must, at or before the time fixed in the venire for their appearance, return it to the court with a list of the persons summoned endorsed thereon.

§ 5323. s 21.

When an incorporated city comprises two or more precincts, jurors may be summoned from any portion of such city, regardless of the particular precinct in which they reside, and may serve in any precinct of such city.

§ 5324. s 22.

A person is not competent to act as a juror:

1. Who does not possess the qualifications prescribed by section 17, Chapter II. of this act.
2. Who has been convicted of malfeasance in office or any felony or other high crime.
3. Who is an officer or soldier of the United States or a person subject to their military control.

Who is exempt from liability to act as a juror.

§ 5325. s 23. A person is exempt from liability to act as a juror if he be:

1. A judicial or civil officer of the United States, or of the Territory of Utah.
2. A person holding a county office.
3. An attorney and counselor-at-law.
4. A person editing a new-paper or periodical.
5. A teacher in a college, academy or school.
6. A practicing physician or surgeon.
7. An officer, keeper or attendant of an almshouse, hospital, asylum, or other charitable institution.
8. Engaged in the performance of duty as officer or attendant of a county jail or the Territorial prison.

9. An express agent, mail carrier, telegraph operator, miller, or a keeper of a public ferry or toll gate.

10. A dispensing druggist of a prescription drug store.

11. A superintendent, engineer, conductor, fireman or station agent of a railroad.

§ 5326. s 24. A person summoned as a juror in a criminal case, in a justice's court, entitled to exemption under the provisions of the preceding section, may nevertheless serve if he be otherwise competent, and do not insist upon his right of exemption.

§ 5327. s 25. A juror cannot be excused by the court for slight or trivial cause, or for hardship or inconvenience to his business, but only when material injury or destruction to his property, or that of the public entrusted to him is threatened, or when his own health, or the sickness or death of a member of his family requires his absence.

§ 5328. s 26. If a person exempt from liability to act as a juror, as provided in section 23 of this Chapter, be summoned as a juror, he may state to the court, under oath, his office, occupation or employment; and if it appear from such statement that he is entitled to exemption, he may be excused by the court.

§ 5329. s 27. The provisions of Chapter L., of Title VI. of "An act regulating the mode of Procedure in Criminal Cases," approved February 22, 1878, and amended in 1884, relative to challenging jurors, shall govern in justices' courts so far as the same are applicable to proceedings in criminal cases in said courts.

CHAPTER III.

THE TRIAL.

SECTION.

5330 Oath to be administered to jury.

5331 Jury must sit together in presence of defendant.

5332 Court must decide questions of law.

5333 Jury may decide in court or may retire; officer must be sworn to take charge of jury.

5334 Verdict must be publicly delivered.

SECTION.

5335 When several defendants are tried, verdict.

5336 Jury cannot be discharged until they agree, unless.

5337 If jury discharged court may proceed again to trial.

5338 If juror sick another may be summoned, etc.

Oath to be read
and administered to
jury.

§ 5330, *30. The jury having been impaneled the court must administer to them the following oath: "You do swear that you will well and truly try this issue between the people of the Territory of Utah (or between the city of — as the case may be) and A. B., the defendant, and a true verdict render according to the evidence."

Jury must sit
together in
presence of
defendant.

§ 5331, *31. After the jury are sworn they must sit together and hear the proofs and allegations of the parties which must be delivered in public, and in the presence of the defendant.

Court must de-
cide questions
of law, etc.

§ 5332, *32. The court must decide all questions of law which may arise in the course of the trial, but can give no charge with respect to matters of fact.

Jury may de-
cide in court
or may retire
for considera-
tion.

§ 5333, *33. After hearing the proofs and allegations the jury may decide in court, or may retire for consideration. If they do not immediately agree an officer must be sworn to the following effect: "You do swear that you will keep this jury together in some quiet and convenient place, that you will not permit any person to speak to them, nor speak to them yourself, unless by order of the court, or to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court."

Officer must
be sworn to
take charge of
jury.

Verdict must
be publicly
delivered.

§ 5334, *34. When the jury have agreed on their verdict, they must deliver it publicly to the court, who must enter or cause it to be entered, in the minutes.

§ 5335. s 35. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

When several defendants are tried, verdict may be rendered as to one or more.

§ 5336. s 36. The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them.

Jury cannot be discharged until they have agreed, unless.

§ 5337. s 37. If the jury is discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial, and so on until a verdict is rendered.

If jury discharged the court may proceed again to the trial.

§ 5338. s 38. If a juror be incapacitated by sickness for attendance through the trial, another juror may be summoned and the trial commenced over again, or the jury discharged and a new jury impaneled.

If juror incapacitated by sickness another may be summoned, etc.

CHAPTER IV.

NEW TRIAL AND ARREST OF JUDGMENT.

SECTION.

SECTION.

5339 Defendant may move for a new trial.

5341 Arrest of judgment may be founded on defect in complaint.

5340 When new trial may be granted.

5342 If judgment not arrested or new trial granted, judgment must be pronounced.

§ 5339. s 41. At any time before judgment, defendant may move for a new trial or in arrest of judgment.

Defendant may move for new trial, etc.

§ 5340. s 42. A new trial may be granted in the following cases:

When new trial may be granted.

1. When the trial has been had in the absence of the defendant, unless he voluntarily absent himself, with full knowledge that a trial is being had.

2. When the jury has received any evidence out of court.

3. When the jury has separated without leave of the court, after having retired to deliberate upon their verdict, or

been guilty of any misconduct tending to prevent a fair and due consideration of the case.

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors.

5. When there has been error in the decision of the court, given on any question of law, during the course of the trial.

6. When the verdict is contrary to law or evidence.

7. When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial; but when a motion for a new trial is made upon this ground, the defendant must produce at the hearing the affidavits of the witnesses by whom such newly-discovered evidence is expected to be given.

Arrest of judgment may be founded on defect in complaint; effect of.

§ 5341. s 43. The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had.

If judgment not arrested, or new trial granted, judgment must be pronounced.

§ 5342. s 44. If the judgment is not arrested, or a new trial granted, judgment must be pronounced at the time appointed, and entered in the minutes of the court.

CHAPTER V.

THE JUDGMENT AND ITS EXECUTION.

SECTION.

- 5343 Judgment.
- 5344 Judgment requiring payment of fine and costs may include imprisonment.
- 5345 Judgment requiring payment of fine, how enforced.
- 5346 Defendant when acquitted must be discharged; complaining witness to pay costs, when.
- 5347 Judgment against complaining witness enforced, how.

SECTION.

- 5348 Appointing time for judgment.
- 5349 When judgment of fine only defendant must be discharged.
- 5350 Proceedings when judgment of imprisonment is rendered.
- 5351 Defendant not to be discharged until fine and costs are paid.
- 5352 Defendant must be discharged upon payment of fine, except, etc.

Judgment.

§ 5343. s 47. When the defendant pleads guilty, or is convicted either by the court or by a jury, the court must render judgment. The judgment may require the defendant:

1. To pay a fine; or,
2. To be imprisoned; or,
3. To pay a fine and the costs of prosecution; or,
4. To pay a fine and also to be imprisoned; or,
5. To pay a fine and the costs of prosecution and also to be imprisoned.

§ 5344. § 48. A judgment requiring the defendant to pay a fine, or a fine and the costs of prosecution, may also direct that he be imprisoned at hard labor until such fine, or such fine and costs, as the case may be, are paid, in the proportion of one day's imprisonment for every dollar of the fine and costs.

Judgment requiring payment of fine and costs may direct imprisonment.

§ 5345. § 49. A judgment that the defendant pay a fine, or a fine and costs, may be enforced by execution as in civil cases.

Judgment requiring payment of fine, how enforced.

§ 5346. § 50. When the defendant is acquitted, either by the court or by the jury, he must be immediately discharged; and if it appear to the court that the prosecution was malicious or without probable cause, it may order the complaining witness to pay the costs of the action, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same within thirty days after the trial.

Defendant, when acquitted must be discharged. Complaining witness to pay costs, when.

§ 5347. § 51. If the complaining witness does not pay the costs, or give security therefor, the court may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment rendered in a civil action.

Judgment against complaining witness enforced, how.

§ 5348. § 52. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court must appoint a time for rendering judgment, which must not be more than two days nor less than six hours after the verdict is rendered, unless the defendant waive the postponement. If postponed the court may hold the defendant to bail to appear for judgment. Unless such postponement is demanded it shall be deemed to be waived.

Appointing time for judgment.

§ 5349. § 53. If judgment of acquittal is given, or judgment imposing a fine only, without imprisonment for non-payment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

When judgment of fine only defendant must be discharged.

Proceedings when judgment of imprisonment is entered.

§ 5350. s 54. When a judgment of imprisonment is entered, a certified copy thereof or an order of commitment reciting the facts of the conviction and judgment must be delivered to the sheriff, marshal, or other officer, which is a sufficient warrant for the execution of the judgment.

Defendant not to be discharged until fine and costs are paid.

§ 5351. s 55. When a judgment is entered imposing a fine and costs, and ordering the defendant to be imprisoned until the fine, or fine and costs, are paid, a certified copy of the judgment or an order of commitment reciting the facts of the conviction and judgment may be delivered to the officer who must hold the defendant in custody during the time specified in the judgment, unless the fine, or fine and costs, are sooner paid. In no case must the total amount of fine and costs be as great as three hundred dollars.

Defendant must be discharged upon payment of the fine, except, etc.

§ 5352. s 56. Upon payment of the fine, or fine and costs, the officer must discharge the defendant if he is not detained for any other legal cause, and deliver the money to the justice, who shall apply it to the payment of the expenses of the prosecution, and pay over the residue, if any, within thirty days to the county or city treasurer, according as the offence is prosecuted for the violation of a Territorial statute or city ordinance. If a fine is imposed, and paid before commitment, it must be applied as prescribed in this Chapter.

CHAPTER VI.

BAIL.

SECTION.

- 5353 Defendant may be admitted to bail at any time.
- 5354 Admission to bail is an order discharging defendant.
- 5355 The taking of bail is the acceptance of a sufficient undertaking

SECTION.

- 5356 Defendant may deposit the amount of bail.
- 5357 After the defendant has given bail he may deposit amount of, etc.
- 5358 Court must apply money on deposit to payment of fine, etc.

Defendant may be admitted to bail at any time.

§ 5353. s 59. The defendant at any time after his arrest, and before conviction, may be admitted to bail.

§ 5354. s 60. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon bail.

Admission to bail is an order discharging defendant.

§ 5355. s 61. The taking of bail consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant according to the terms of the undertaking, or that the bail will pay to the people of this Territory a specified sum.

The taking of bail is the acceptance of a sufficient undertaking.

§ 5356. s 62. The defendant, at any time after the making of an order admitting him to bail, instead of giving bail, may deposit with the magistrate or court, in which he is held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is, a certificate of the deposit, he must be discharged from custody.

Defendant may deposit amount of bail.

§ 5357. s 63. If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made the bail is exonerated.

After defendant has given bail he may deposit amount of, etc.

§ 5358. s 64. When money has been deposited, if it remain on deposit at the time of a judgment for the payment of a fine, the court may apply the money in satisfaction thereof, and after satisfying the fine and costs, must refund the surplus, if any, to the defendant.

Court may apply money on deposit to payment of fine, etc.

SURRENDER OF THE DEFENDANT.

SECTION.

SECTION.

5359 The bail may surrender the defendant at any time before forfeiture, manner of.

5360 The bail may arrest defendant for the purpose of surrendering him.

5361 If money has been deposited it must be returned if defendant surrender himself.

§ 5359. s 65. At any time before the forfeiture of their undertaking the bail may surrender the defendant in their exoneration, or he may surrender himself, to the officer to whose custody he was committed at the time of giving bail, in the following manner:

The bail may surrender defendant at any time before forfeiture.

Manner of.

1. A certified copy of the undertaking of the bail must be delivered to the officer who must detain the defendant in his custody thereon as upon a commitment, and by a certificate in writing acknowledge the surrender.

2. Upon the undertaking and the certificate of the officer, the court in which the action is pending must order that the bail be exonerated, and on filing the order and the papers used on the application, they are exonerated accordingly.

The bail may arrest defend-
ant for the
purpose of
surrendering
him.

§ 5360. s 66. For the purpose of surrendering the defendant, the bail at any time before they are finally discharged, and at any place within the Territory, may themselves arrest him, or by a written authority endorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

If money has
been depos-
ited, it must
be returned if
defendant sur-
render him-
self.

§ 5361. s 67. If money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, surrenders himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the court must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender.

FORFEITURE OF THE UNDERTAKING OF BAIL OR OF THE DEPOSIT
OF MONEY.

SECTION.

- 5362 When bail is forfeited.
- 5363 Prosecuting attorney may proceed by action against bail.
- 5364 Money deposited as bail when forfeited must be paid into county treasury.

SECTION.

- 5365 Manner and form of giving bail.
- 5366 Qualification of bail.
- 5367 Same.
- 5368 Defendant to be discharged upon allowance of bail.

When bail is
forfeited.

§ 5362. s 68. If, without sufficient excuse defendant neglects to appear for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the

magistrate must direct the fact to be entered upon the minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, is thereupon declared forfeited. But if at any time before the final adjournment of the court, the defendant or his bail, appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or the deposit to be discharged upon such terms as may be just.

Court may direct the forfeiture to be discharged, when.

§ 5363. s 69. If the forfeiture is not discharged, as provided in the last section, the prosecuting attorney may at any time, after the adjournment of the court, proceed by action only against the bail upon their undertaking.

Prosecuting attorney may proceed by action against bail, when.

§ 5364. s 70. If, by reason of the neglect of the defendant to appear, money deposited instead of bail is forfeited, and the forfeiture is not discharged or remitted the magistrate with whom it is deposited must within five days after the bail is forfeited pay over the money deposited into the county treasury of the county in which the offence was committed.

Money deposited as bail, when forfeited, must be paid into the county treasury.

§ 5365. s 71. Bail is put in by a written undertaking, executed by two sufficient sureties (with or without the defendant in the discretion of the magistrate), and acknowledged before the court or magistrate, in substantially the following form:

Manner and form of giving bail.

An order having been made on the——day of——, A. D., 18—, by A. B., a justice of the peace of——county (or as the case may be), that C. D. be held to answer upon a charge of (stating briefly the nature of the offence) upon which he has been admitted to bail in the sum of——dollars; we, E. F. and G. H. (stating their place of residence and occupation,) hereby undertake that the above named C. D. will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and if convicted, will appear for judgment and render himself in execution thereof, or if he fails to perform either of these conditions, that we will pay to the people of the Territory of Utah the sum of——dollars (inserting the sum in which the defendant is admitted to bail).

§ 5366. s 72. The qualifications of bail are as follows:

Qualification of bail.

1. Each of them must be a resident, and householder, or freeholder within the Territory; but the court or magis-

trate may refuse to accept any person as bail who is not a resident of the county in which the offence was committed where bail is offered.

2. They must each be worth the amount specified in the undertaking exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of sufficient bail.

§ 5367. s 73. The bail must in all cases justify by affidavit taken before the magistrate, that they each possess the qualifications provided in the preceding section. The magistrate may further examine the bail upon oath concerning their sufficiency in such manner as he may deem proper.

§ 5368. s 74. Upon the allowance of bail, and the execution of the undertaking, the magistrate must, if the defendant is in custody, make and sign an order for his discharge upon the delivery of which to the proper officer the defendant must be discharged.

Defendant to be discharged upon allowance of bail.

CHAPTER VII.

SUBPŒNAS.

SECTION.

5369 What is a subpœna.

5370 Either party entitled to subpœnas.

5371 Form of subpœna.

5372 Who may serve subpœna.

SECTION.

5373 Persons living out of the county not obliged to attend court, unless.

5374 The court may require any competent person to act as interpreter.

What is a subpœna.

§ 5369. s 78. The process by which the attendance of witnesses before a court or magistrate is required is a subpœna.

Either party entitled to subpœnas, etc.

§ 5370. s 79. On the application of either party, the justice must issue a subpœna for such witness or witnesses as are desired by the applicant; *Provided*, That names of all the witnesses desired by both parties, may be included in the same subpœna.

When books, papers, etc., are required.

§ 5371. s 80. A subpœna must be substantially in the following form: The people of the Territory of Utah, to

(naming the witness or witnesses): You are required to appear before me,——, a justice of the peace of—— precinct, in——county, at (naming the place) on (stating the day and hour), as a witness in a criminal action prosecuted by the people of the Territory of Utah, against——.

Given under my hand this——day of ——A. D. 18——.
 ——Justice of the Peace.

If books, papers, or documents are required, a direction to the following effect must be contained in the subpoena.

“And you are required also to bring with you the following: (describing intelligibly the books, papers or documents required.)”

§ 5372. s 81. A subpoena may be served by any person Who may serve subpoena. over twenty-one years of age, but a peace officer must serve in any county any subpoena delivered to him for service, either on the part of the people or of the defendant, and must, without delay, make a written return of the service, subscribed by him, stating the time and place of service. The service is made by showing the original to the witness personally and informing them of its contents.

§ 5373. s 82. No person is obliged to attend as a witness before a justice's court, out of the county in which the witness resides, unless the justice shall indorse on the subpoena an order for the attendance of the witness: *Provided*, Persons living out of the county not obliged to attend court unless. Such indorsement shall not be made on the subpoena unless Provided the party desiring the witness shall first file with the justice an affidavit showing that the evidence of the witness is material, and that his attendance at the trial is desired.

§ 5374. s 83. The justice may issue an order requiring any competent person to appear before the court at or during a trial or proceeding and act as interpreter. Said interpreter must be sworn to the effect that he will well and truly, to the best of his ability, discharge the duties of interpreter, under the direction of the court. The manner of compelling compliance on the part of the interpreter is the same as that provided in the case of witnesses. The justice may require any competent person to act as interpreter.

CHAPTER VIII.

CONTEMPTS AND THE PUNISHMENTS THEREOF.

SECTION.

5375 Justice may punish for contempt, when.
 5376 Contempt in presence of justice may be punished summarily.

SECTION.

5377 When contempt not committed in presence of justice warrant may issue.
 5378 Penalty for contempt.

Justice may punish for contempt, when.

§ 5375. s 84. A justice may punish, as for contempt, persons guilty of the following acts, and no other:

1. Disorderly, contemptuous or insolent behavior towards the justice while holding court, tending to interrupt the due course of a trial or other judicial proceeding.

2. A breach of the peace, boisterous conduct, or violent disturbance in the presence of the justice, or in the immediate vicinity of the court held by him, tending to interrupt the due course of a trial or other judicial proceeding.

3. Disobedience or resistance to the execution of a lawful order or process, made or issued by him.

4. Disobedience to a subpoena duly served, or refusing to be sworn, or to answer as a witness.

5. Rescuing any person or property in the custody of an officer by virtue of an order or process of the court held by him.

Contempt in presence of justice may be punished summarily.

§ 5376. s 85. When a contempt is committed in the immediate view and presence of the justice, it may be punished summarily: to that end an order must be made reciting the facts, as they occurred, and adjudging that the person proceeded against is thereby guilty of contempt, and that he be punished as therein prescribed.

When contempt is not committed in presence of justice, a warrant may be issued.

§ 5377. s 86. When the contempt is not committed in the immediate view and presence of the justice, a warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brought before the justice immediately, when an opportunity to be heard in his defense or excuse must be given. The justice may, thereupon, discharge him, or may convict him of the offence.

Penalty for contempt.

§ 5378. s 87. A justice may punish for contempt by fine or imprisonment, or both: such fine not to exceed in any case one hundred dollars, and such imprisonment, one day.

CHAPTER IX.

APPEALS TO DISTRICT COURTS.

SECTION.

5379 Defendant may appeal to district court.

5380 Appeal how taken.

5381 Witnesses may be required to enter into recognizance.

SECTION.

5382 Appeal cannot be dismissed for insufficiency, etc.

5383 If the appeal is dismissed copy must be remitted to justice.

5384 Appeal vacates judgment.

§ 5379. s 90. Any defendant in a criminal action tried before a justice of the peace, who is dissatisfied with the final judgment of such justice, may appeal therefrom to the district court of the district embracing the county where such justice's court is held, at any time within thirty days from the rendition of such judgment.

Defendant may appeal to district court.

§ 5380. s 91. The appeal is taken by filing with the justice an affidavit by or on behalf of the appellant, in which the alleged errors of the proceedings complained of are stated, and that the affiant verily believes that injustice has been done, and by filing an undertaking by or on behalf of the defendant, in at least double the amount of the fine, or of the fine and costs, as the case may be, with at least two good and sufficient sureties, and conditioned that he will appear at the first term of the court thereafter to which appeal is taken and answer the charge to which he has been convicted, and appear in whatever court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and if convicted will appear for judgment, and render himself in execution thereof; or, if he fails to perform either of these conditions, that the sureties will pay the people of the Territory of Utah, or to the municipal corporation as the case may be, the sum specified in the undertaking. But the appeal shall not be effectual for any purpose whatever, unless the party taking the appeal shall cause the papers in the case to be filed in the district court within thirty days after the appeal is perfected. In case the party taking the appeal neglects to have the papers filed in the district court, within thirty days next after the appeal is perfected, then the other party to the suit may have the

Appeal how taken.

Condition of undertaking for appeal.

When appeal taken to be filed.
Feb. 21, 1888.

Neglect to file appeal papers, effect of.

papers filed, and shall be entitled to an order dismissing the appeal, and may at once proceed to obtain execution of the judgment of the justice's court.

Feb. 21, 1888.
Witnesses
may be re-
quired to
enter into
undertaking,
condition of.

§ 5381. s 92. The justice may cause all material witnesses to enter into an undertaking with at least two sufficient sureties, to appear at the time and place of trial, in whatever court the said charge may be prosecuted, conditional that they will at all times render themselves amenable to the orders and process of the court, or if they fail to perform either of these conditions, that the sureties shall pay to the people of the Territory, or to the municipal corporation as the case may be, the sum specified in the undertaking. The justice shall forthwith transmit all the papers in the case, together with a certified copy of the entries in his docket to the clerk of the district court to which the case is appealed. On receipt of the papers, the clerk shall forthwith file them upon payment of the fees therefor and upon the rendition of judgment in the case, costs both of the district and justice's courts, shall be taxed against the losing party, in the same manner as costs are taxed in civil causes. And the fine imposed in said district court together with said justice's costs, shall be transmitted to the county or municipal corporation, as the case may be, from which such case was appealed.

All papers to
be trans-
mitted to
clerk of dis-
trict court;
duty of clerk;
costs how
taxed.

Fine and costs
how disposed
of.

Defective
complaint
may be
amended.

Appeal not to
be dismissed,
when.

If appeal is
dismissed,
copy must be
remitted to
justice.

Appeal vac-
ates judg-
ment.

§ 5382. s 93. If on the appeal, any complaint is found to be insufficient or informal, it may be amended as a matter of right, or a new complaint filed by leave of the court, within such time as may be allowed, and no appeal shall be dismissed for an insufficiency or informality, in either the affidavit or undertaking, or both, if the defendant file a sufficient affidavit or undertaking, in pursuance of any order of the court. All laws in conflict with this act are hereby repealed.

§ 5383. s 94. If the appeal is dismissed, a copy of the order of dismissal must be remitted to the justice, who may proceed to enforce the judgment.

§ 5384. s 95. The appeal vacates the judgment appealed from, and the case must be tried *de novo* in the district court.

CHAPTER X.

GENERAL PROVISIONS.

SECTION.	SECTION.
5385 Jurisdiction of justices of the peace.	5391 Proceedings in relation to binding persons over to keep the peace.
5386 Rules for determining competency of witnesses.	5392 Proceedings relating to cases in which justice sits as committing magistrate.
5387 Husband and wife not competent witnesses.	5393 Provisions of this act have no application to civil cases.
5388 Defendant without his consent is not a competent witness.	5394 Act takes effect, when.
5389 Justice of the peace may depute constable.	5395 Repeal.
5390 Who is a peace officer.	

§ 5385. s 98. In criminal cases, the jurisdiction of justices of the peace extends to the limits of their respective counties. Jurisdiction of justices of the peace.

§ 5386. s 99. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this act. Rules for determining competency of witnesses.

§ 5387. s 100. Except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife are competent witnesses for or against each other, in a criminal action or proceeding to which one or both are parties. Husband and wife not competent witnesses.

§ 5388. s 101. A defendant in a criminal action or proceeding to which he is a party, is not, without his consent, a competent witness for or against himself. His neglect or refusal to give his consent shall not in any manner prejudice him nor be used against him on the trial or proceeding. Defendant without his consent is not a competent witness.

§ 5389. s 102. A justice of the peace may depute, in writing, any suitable and discreet person to act as constable, when no constable is at hand, and the nature of the business requires immediate action. Justice of the peace may depute constable.

§ 5390. s 103. A peace officer is a sheriff of a county, a constable of a precinct, a marshal or a policeman of any incorporated city. Who is a peace officer.

§ 5391. s 104. The proceedings relative to binding any person over to keep the peace are specified in Chapter III. of Title I. of "An act regulating the mode of Procedure in Proceedings in relation to binding persons over to keep the peace.

Criminal Cases," approved February 22, 1878, and amended in 1884.

The proceed-
ings relating
to cases in
which justice
sits as commit-
ting magis-
trate

§ 5392. s 105. The proceedings relative to cases in which a justice sits as a committing magistrate are also specified in the act referred to in the preceding section; all expenses incurred in such cases are hereby declared to be a charge against the county in which the examination is held.

Provisions of
this act have
no application
to civil cases,
etc.

§ 5393. s 106. The provisions of this act have not necessarily any application to procedure in civil cases in justices' courts, and all civil actions in such courts must be conducted according to the provisions of the laws relative thereto, and nothing in this act shall be construed as being in conflict with any of the provisions of such laws nor of the provisions of any law relative to proceedings in any other than justices' courts.

Act takes effect
when.

§ 5394. s 107. This act shall take effect at twelve o'clock noon on the first day of August, A. D. 1884, and from and after that time all prosecutions for public offences, in all courts held by justices of the peace, police justices, and mayors and aldermen sitting as justices of the peace, or police justices, whether such prosecutions be brought under the ordinances or by-laws of any incorporated city, or under the laws of this Territory, must be conducted according to the provisions of this act.

§ 5395. s 108. All laws and parts of laws in conflict with this act are hereby repealed.

[Approved, March 13, 1884.]

DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

SECTION.

5396 Disposition of property alleged to have been stolen or embezzled.

5397 Same.

5398 Magistrate must deliver it to owner.

SECTION.

5399 Property not claimed must be sold and proceeds how applied.

5400 When money taken from defendant receipt must be given.

5401 Clerk of police office must keep record.

Feb. 18, 1876.

Disposition of
property al-
leged to have
been stolen or
embezzled.

§ 5396. (2272) When property, alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

§ 5397. ⁽²²⁷³⁾ On satisfactory proof of the ownership of same, the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling it, must order it to be delivered to the owner, on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

§ 5398. ⁽²²⁷⁴⁾ If property stolen or embezzled comes into custody of the magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

§ 5399. ⁽²²⁷⁵⁾ If the property stolen or embezzled is not claimed by the owner before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody must sell the same at public auction, as provided by law for the sale of personal property or execution, and apply the proceeds:

1. To the necessary expenses for its preservation and sale.

2. Any balance must be paid into the county treasury of the county in which the offence was committed.

§ 5400. ⁽²²⁷⁶⁾ When money or other property is taken from a defendant, arrested upon a charge of a public offence, the officer taking it must at the time give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken; one of which receipts he must deliver to the defendant and the other he must forthwith file with the court to which the depositions and statement are to be sent. When such property is taken by a police officer of any incorporated city, he must deliver one of the receipts to the defendant, and the other with the property, at once to the clerk or other person in charge of the police office in such city.

§ 5401. ⁽²²⁷⁷⁾ The clerk, or person having charge of the police office in any incorporated city must enter in a suitable book a description of every article of property alleged to be stolen or embezzled, and brought into the office or taken from the person of a prisoner, and must attach a number to each article, and make a corresponding entry thereof.

OF SEARCH WARRANTS.

SECTION.

- 5402 "Search warrant" defined.
 5403 Upon what grounds it may be issued.
 5404 It cannot be issued but upon probable cause, etc.
 5405 Magistrate must examine on oath, complaint, etc.
 5406 Depositions, what to contain.
 5407 When to issue warrant.
 5408 Form of warrant.
 5409 By whom served.
 5410 Officers may break open door, etc., to execute warrant.
 5411 May liberate persons acting in his aid.
 5412 When warrant may be served in the night.

SECTION.

- 5413 Within what time warrant must be executed.
 5414 Officer to give receipt for property taken.
 5415 Property, how disposed of.
 5416 Return of warrant and delivery of inventory of property taken.
 5417 Copy of inventory, to whom delivered.
 5418 Proceedings if grounds of warrant are controverted.
 5419 When property to be restored to person from whom taken.
 5420 Disposition of deposition, warrant, etc.
 5421 When defendant may be searched.

"Search warrant" defined.
 Feb. 18, 1876.

§ 5402. ⁽²²⁷⁸⁾ A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate.

Upon what grounds it may be issued.

§ 5403. ⁽²²⁷⁹⁾ It may be issued upon either of the following grounds:

1. When the property was stolen or embezzled; in which case it may be taken on the warrant, from any place in which it is concealed, or from any person in whose possession it may be.

2. When it was used as the means of committing a felony; in which case it may be taken on the warrant from the place in which it is concealed, or from any person in whose possession it may be.

3. When it is in the possession of any person with the intent to use it as the means of committing a public offence, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered; in which case it may be taken on the warrant from such person, or from any place occupied by him or under his control, or from the possession of the person to whom he may have so delivered it.

§ 5404. ⁽²²⁸⁰⁾ A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or de-

scribing the person, and particularly describing the property and the place to be searched.

It cannot be issued but upon probable cause, etc.

§ 5405. (2281) The magistrate must, before issuing the warrant, examine on oath the complainant, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Magistrate must examine, on oath, complainant, etc.

§ 5406. (2282) The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

Depositions what to contain.

§ 5407. (2283) If the magistrate is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate.

When to issue warrant.

§ 5408. (2284) The warrant must be in substantially the following form: County of——, the people of the Territory of Utah, to any sheriff, constable, marshal, or policeman in the county of——: Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken), that (stating the grounds of the application, or, if the affidavit be not positive, that there is probable cause for believing that—stating the ground of the application in the same manner), you are therefore commanded, in the day time (or at any time of the day or night, as the case may be), to make immediate search on the person of——(or in the house situated——, describing it or any other place to be searched, with reasonable particularity, as the case may be) for the following property: (describing it with reasonable particularity); and if you find the same or any part thereof, to bring forthwith before me at (stating the place). Given under my hand, and dated this——day of——, A. D., eighteen——. ——, Justice of the Peace (or as the case may be).

Form of warrant.

§ 5409. (2285) A search warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

By whom served.

§ 5410. (2286) The officer may break open any outer or inner door or window of a house, or any part of a house or

Officer may open door, etc., to execute warrant.

anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

May liberate
persons act-
ing in his aid.

§ 5411. (2287) He may break open any outer or inner door or window of a house, for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

When warrant
may be served
in the night.

§ 5412. (2288) The magistrate must insert a direction in the warrant that it be served in the day time, unless the affidavits are positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night.

Within what
time warrant
must be exe-
cuted.

§ 5413. (2289) A search warrant must be executed and returned to the magistrate who issued it within twenty days after its date; after the expiration of this time the warrant, unless executed, is void.

Officer to give
receipt for
property
taken.

§ 5414. (2290) When the officer takes property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property.

Property, how
disposed of.

§ 5415. (2291) When the property is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it as provided in sections seven to twelve, inclusive. (1) If it was taken on a warrant issued on the grounds stated in the second and third subdivisions of section thirteen, he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offence in respect to which the property taken is triable.

Return of war-
rant and de-
livery of in-
ventory of
property
taken

§ 5416. (2292) The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect: "I,——, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed

(1) The sections here referred to are § 5397 to 5401.

account of all the property taken by me on the warrant."

§ 5417. ⁽²²⁶³⁾ The magistrate must thereupon, if re- Copy of inventory, to whom delivered
quired, deliver a copy of the inventory to the person from
whose possession the property was taken, and to the applicant
for the warrant.

§ 5418. ⁽²²⁶⁴⁾ If the grounds on which the warrant was Proceedings if grounds of warrant are controverted.
issued be controverted, he must proceed to take testimony in
relation thereto, and the testimony of each witness must be
reduced to writing and authenticated in the following manner:

1. It must state the name of the witness, his place of
residence and his business or profession.

2. It must contain the questions put to the witness, and
his answers thereto, each answer being distinctly read to him
as it is taken down, and being corrected or added to until it
conforms to the truth.

3. If a question put be objected to on either side and
overruled, or the witness declines answering it, that fact, with
the ground on which the question was overruled or the answer
declined, must be stated.

4. The deposition must be signed by the witness, or if
he refuses to sign it, his reason for refusing must be stated in
writing as he gives it.

5. It must be signed and certified by the magistrate.

§ 5419. ⁽²²⁶⁵⁾ If it appears that the property taken is When prop- erty to be re- stored to per- son from whom taken.
not the same as that described in the warrant, or that there is
no probable cause for believing the existence of the grounds
on which the warrant was issued, the magistrate must cause
it to be restored to the person from whom it was taken.

§ 5420. ⁽²²⁶⁶⁾ The magistrate must annex together the Disposition of depositions, warrant, etc.
depositions, the search warrant, the return, and the inventory;
and return them to the court having power to inquire into the
offence in respect to which the search warrant was issued, at
or before the opening of the court on the first day of its next
term, or if he have jurisdiction of the offence he must retain
them and proceed to try the accused.

§ 5421. ⁽²²⁶⁷⁾ When a person charged with a felony is When defend- ant may be searched.
supposed to have on his person a dangerous weapon, or any-
thing which may be used as evidence of the commission of
the offence, the officer making the arrest shall cause him to be
searched, and the weapon or other thing to be retained, sub-
ject to the order of the court in which the defendant may be
tried.

PART FIFTEENTH.

FEES.

CHAPTER I.

UNITED STATES FEE BILL.

By an act of Congress, approved June 23, 1874 (see sec. 7, ante page 107), the following fee bill, so far as applicable, is extended over the Territory of Utah, and for convenience is inserted in this compilation in connection with the Territorial fee bill.

[Revised Statutes of the United States, page 153.]

5422 Fees to be taxed.	5431 No officer of court to have witness fees.
5423 Attorneys, solicitors and proctors.	5432 Expense of clerks, etc., sent away as witnesses.
5424 Fees in revenue cases and in suits on official bonds.	5433 Fees of grand and petit jurors.
5425 Fees on bond, when not allowed.	5434 Printers' fees.
5426 Fees of district attorney for defense of revenue officers.	5435 "Folio" defined.
5427 Clerks' fees; books in clerks' offices open to inspection.	5436 Jurors and witnesses, when paid by marshal.
5428 Marshals' fees.	5437 Fees of district attorneys, marshals, etc., how paid.
5429 Commissioners' fees.	5438 Fees how recovered.
5430 Witnesses' fees.	

Fees to be
taxed.
Feb. 26, 1857.

§ 5422. s 823. The following and no other compensation shall be taxed and allowed to attorneys, solicitors, and proctors in the courts of the United States, to district attorneys, clerks of the circuit and district courts, marshals, commissioners, witnesses, jurors and printers in the several States and Territories, except in cases otherwise expressly provided by law. But nothing herein shall be construed to prohibit attorneys, solicitors, and proctors from charging to and receiving from their clients, other than the government, such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage in their respective States, or may be agreed upon between the parties.

FEES OF ATTORNEYS, SOLICITORS AND PROCTORS.

§ 5423. s 824. On a trial before a jury in civil or criminal causes or before referees, or on a final hearing in equity or admiralty, a docket fee of

twenty dollars: *Provided*, That in cases of admiralty and maritime jurisdiction, where the libellant recovers less than fifty dollars, the docket fee of his proctor shall be but ten dollars. Attorneys, solicitors, and proctors.

In cases at law, where judgment is rendered without a jury, ten dollars.

In cases at law, when the cause is discontinued, five dollars.

For *scire facias*, and other proceedings on recognizance, five dollars.

For each deposition taken and admitted in evidence in a cause, two dollars and fifty cents.

For services rendered in cases removed from a district to a circuit court by writ of error or appeal, five dollars.

For examination by a district attorney* before a judge or commissioner, of persons charged with crime, five dollars a day for the time necessarily employed.

For each day of his necessary attendance in a court of the United States on the business of the United States, when the court is held at the place of his abode, five dollars; and for his attendance when the court is held elsewhere, five dollars for each day of the term.

For traveling from the place of his abode to the place of holding any court of the United States in his district or to the place of any examination before a judge or commissioner of a person charged with crime, ten cents a mile for going and ten cents a mile for returning. When an indictment for crime is tried before a jury and a conviction is had, the district attorney may be allowed, in addition to the attorneys' fees herein provided, a counsel fee, in proportion to the importance and difficulty of the cause, not exceeding thirty dollars.

§ 5424. s 825. There shall be taxed and paid to every district attorney two per centum upon all moneys collected or realized in any suit or proceedings arising under the revenue laws, and conducted by him, in which the United States is a party, which shall be in lieu of all costs and fees in such proceeding. Fees in revenue cases, and in suits on official bonds.

§ 5425. s 826. No fee shall accrue to any district attorney on any bond left with him for collection or in a suit commenced on any bond for the renewal of which provision is made by law, unless the party neglects to apply for such renewal for more than twenty days after the maturity of the bond. Fees on bonds when not allowed.

§ 5426. s 827. When a district attorney appears by direction of the Secretary or Solicitor of the Treasury, on behalf of any officer of the revenue in any suit against such officer, for any act done by him, or for the recovery of any money received by him, and paid into the treasury in the performance of his official duty, he shall receive such compensation as may be certified to be proper by the court in which the suit is brought, and approved by the Secretary of the Treasury. Fees of district attorney for defence of revenue officers.

CLERKS' FEES.

§ 5427. s 828. For issuing and entering every process, commission, Clerk's fees. summons, *capias*, execution, warrant, attachment, or other writ, except a writ of venire, or a summons or subpoena for a witness, one dollar.

For issuing a writ of summons or subpoena, twenty-five cents.

For filing and entering every declaration, plea, or other paper, ten cents.

For administering an oath or affirmation, except to a juror, ten cents.

For taking an acknowledgment, twenty-five cents.

For taking and certifying depositions to file, twenty cents for each folio of one hundred words.

For a copy of such deposition furnished to a party on request, ten cents a folio.

For entering any return, rule, order, continuance, judgment, decree, or recognizance, or drawing any bond, or making any record, certificate, return, or report, for each folio, fifteen cents.

For a copy of any entry or record, or of any paper on file, for each folio, ten cents.

For making docketts and indexes, issuing venire, taxing costs, and all other services, on the trial or argument of a cause where issue is joined and testimony given, three dollars.

For making docketts and indexes, taxing costs and all other services, in a cause when issue is joined but no testimony is given, two dollars.

For making docketts and indexes, taxing costs and other services in a cause which is dismissed or discontinued, or where judgment or decree is made or rendered without issue, one dollar.

For making docketts and taxing costs, in cases removed by writ of error or appeal, one dollar.

For affixing the seal of the court to any instrument, when required, twenty cents.

For every search for any particular mortgage, judgment or other lien, fifteen cents.

For searching the records of the court for judgments, decrees or other instruments constituting a general lien on real estate and certifying the result of such search, fifteen cents for each person against whom such search is required to be made.

For receiving, keeping and paying out money, in pursuance of any statute or order of court, one per centum on the amount so received, kept and paid.

For traveling from the office of the clerk, where he is required to reside, to the place of holding any court required by law to be held, five cents a mile for going and five cents for returning, and five dollars a day for his attendance on the court while actually in session.

All books in the offices of the clerks of the circuit and district courts, containing the docket or minute of the judgments, or decrees thereof, shall, during office hours, be open to the inspection of any person desiring to examine the same without any fees or charge therefor.

'MARSHALS' FEES.

§ 5428. s 829. For service of any warrant, attachment, summons, *capias* or other writ, except execution, venire or a summons subpœna for a witness, two dollars for each person on whom service is made.

For the keeping of personal property attached on *mesne* process, such compensation as the court, on petition, setting forth the facts under oath, may allow.

For serving venires and summoning every twelve men as grand or petit jurors, four dollars, or thirty-three and one-third cents each. In States where, by the laws thereof, jurors are drawn by lot, by constables or other officers of corporate places, the marshal shall receive, for each jury, two dollars for the use of the officers employed in drawing and summoning the jurors and returning each venire, and two dollars for his own services in distributing the venires. But the fees for distributing and serving venires, drawing and summoning jurors by township officers, including the mileage chargeable by the marshal for each service, shall not in any court exceed fifty dollars.

Books in clerk's offices open to inspection.

Marshals' fee.

For holding a court of inquiry or other proceedings before a jury, including the summoning of a jury, five dollars.

For serving a writ of subpœna on a witness, fifty cents; and no further compensation shall be allowed for any copy, summons or notice for a witness.

For serving a writ of possession, partition, execution or any final process, the same mileage as is allowed for the service of any other writ and for making the service, seizing or levying on property, advertising and disposing of the same by sale, set-off, or otherwise, according to law, receiving and paying over the money, the same fees and poundage as are or shall be allowed for similar services to the sheriffs of the States, respectively, in which the service is rendered.

For each bail bond, fifty cents.

For summoning appraisers, fifty cents each.

For executing a deed prepared by a party or his attorney, one dollar.

For drawing and executing a deed, five dollars.

For copies of writs or papers furnished at the request of any party, ten cents a folio.

For every proclamation in admiralty, thirty cents.

For serving an attachment *in rem*, or a libel in admiralty, two dollars.

For the necessary expenses of keeping boats, vessels or other property attached or libeled in admiralty, not exceeding two dollars and fifty cents a day.

When the debt or claim in admiralty is settled by the parties without a sale of the property, the marshal shall be entitled to a commission of one per centum on the first five hundred dollars of the claim or decree, and one-half of one per centum on the excess of any sum thereof over five hundred dollars; *Provided*, That when the value of the property is less than the claim, such commission shall be allowed only on the appraised value thereof.

For sale of vessels or other property under process in admiralty, or under the order of a court of admiralty, and for receiving and paying over the money, two and one-half per centum on any sum under five hundred dollars, and one and one-quarter per centum on the excess of any sum over five hundred.

For disbursing money to jurors and witnesses and for other expenses, two per centum.

For expenses while employed in endeavoring to arrest, under process, any person charged with or convicted of a crime, the sum actually expended, not to exceed two dollars a day in addition to his compensation for service and travel.

For every commitment or discharge of a prisoner, fifty cents.

For transporting criminals, ten cents a mile for himself and for each prisoner and necessary guard; except in the case provided for in the next paragraph.

For transporting criminals convicted of a crime in any district or Territory where there is no penitentiary available for the confinement of convicts of the United States, to a prison in another district or Territory designated by the attorney-general, the reasonable actual expense of transportation of the criminals, the marshal and the guards, and the necessary subsistence and hire.

For attending the circuit and district courts, when both are in session, or either of them when only one is in session, and for bringing in and committing prisoners and witnesses during the term, five dollars a day.

For attending examinations before a commissioner and bringing in,

guarding and returning prisoners charged with crime and witnesses, two dollars a day, and for each deputy not exceeding two, necessarily attending, two dollars a day.

For traveling from his residence to the place of holding court to attend a term thereof, ten cents a mile for going only.

For travel, in going only, to serve any process, warrant, attachment, or other writ, including writs of subpoena in civil or criminal cases, six cents a mile, to be computed from the place where the process is returned to the place of service, or, when more than one person is served therewith, to the place of service which is more remote, adding thereto the extra travel which is necessary to serve it on the others. But where more than two writs of any kind required to be served in behalf of the same party on the same person might be served at the same time, the marshal shall be entitled to compensation for travel on only two of such writs; and to save necessary expense, it shall be the duty of the clerk to insert the names of as many witnesses in a cause in such subpoena as convenience in serving the same will permit.

In all cases where mileage is allowed to the marshal he may elect to receive the same or his actual traveling expenses, to be proved on his oath, to the satisfaction of the court.

SEC. 830. to 846. Inclusive. (1)

COMMISSIONERS' FEES.

Commissioners' fees.

§ 5429. s 847. For administering an oath, ten cents.

For taking an acknowledgment, twenty-five cents.

For hearing and deciding on criminal charges, five dollars a day for the time necessarily employed.

For attending to a reference in a litigated matter, in a civil cause at law, in equity, or in admiralty, in pursuance of an order of the court, three dollars a day.

For taking and certifying depositions to file, twenty cents for each folio.

For each copy of the same furnished to a party on request, ten cents for each folio.

For issuing any warrant or writ, and for any other service, the same compensation as is allowed to clerks for like services.

For issuing any warrant under the tenth article of the treaty of August nine, one thousand eight hundred and forty-two, between the United States and the Queen of the United Kingdom of Great Britain and Ireland, against any person charged with any crime or offence set forth in said article, two dollars.

For issuing any warrant under the provisions of the convention for the surrender of criminals, between the United States and the King of the French, concluded at Washington, November nine, one thousand eight hundred and forty-three, two dollars.

For hearing and deciding upon the case of any person charged with any crime or offence, and arrested under the provisions of said treaty, or of said convention, five dollars a day for the time necessarily employed.

For the examination and certificate in cases of applications for discharge of poor convicts imprisoned for non-payment of a fine or fine and costs, five dollars a day for the time necessarily employed.

(1) These sections refer to officers of the Supreme and circuit courts of the United States, and districts of California, Oregon and Nevada.

WITNESS' FEES.

§ 5430. s 848. For each day's attendance in court, or before any officer Witness' fees. pursuant to law, one dollar and fifty cents, and five cents a mile for going from his place of residence to the place of trial or hearing, and five cents a mile for returning. When a witness is subpoenaed in more than one cause between the same parties, at the same court, only one trial fee and one per diem compensation shall be allowed for attendance. Both shall be taxed in the cause first disposed of, after which the per diem attendance fee alone shall be taxed in the other cases in the order in which they are disposed of. When a witness is detained in prison for want of security for his appearance, he shall be entitled, in addition to his subsistence, to a compensation of one dollar a day.

§ 5431. s 849. No officer of the United States courts, in any State or Territory, or in the District of Columbia, shall be entitled to witness' fees No officer of the court to have witness' fees. for attending before any court or commissioner where he is officiating.

§ 5432. s 850. When any clerk or other officer of the United States is sent away from his place of business as a witness for the government, his necessary expenses, stated in items and sworn to, in going, returning, and attendance on the court, shall be audited and paid; but no mileage, or other compensation in addition to his salary, shall in any case be allowed. Expenses of clerks, etc., sent away as witnesses.

S. 851. (1)

JURORS' FEES.

§ 5433. s 852. For actual attendance at any court or courts, and for the time necessarily occupied in going to and returning from the same, three Fees of grand and petit jurors. dollars a day during such attendance.

For the distance necessarily traveled from their residence in going to and returning from said court by the shortest practicable route, five cents a mile.

PRINTERS' FEES.

§ 5434. s 853. For publishing any notice or order required by law or Printers' fees. the lawful order of any court, department, bureau or other person in any newspaper, except as mentioned in sections thirty-eight hundred and twenty-three, thirty-eight hundred and twenty-four and thirty-eight hundred and twenty-five, title "Public Printing, Advertisements and Public Documents," forty cents per folio for the first insertion, and twenty cents per folio for each subsequent insertion. The compensation herein provided shall include the furnishing of lawful evidence, under oath, of publication, to be made and furnished by the printer or publisher making such publication.

§ 4435. s 854. The term folio, in this chapter, shall mean one hundred "Folio" defined. words, counting each figure as a word. When there are over fifty and under

(1) Refers to seamen being sent home as witnesses.

one hundred words, they shall be counted as one folio; but a less number than fifty words shall not be counted, except when the whole statute, notice, or order contains less than fifty words.

FEES: HOW PAID AND RECOVERED.

Jurors and witnesses, when paid by marshal.

§ 5436, s. 856. In cases where the United States are parties, the marshal shall, on the order of the court, to be entered on its minutes, pay to the jurors and witnesses all fees to which they appear by such order to be entitled, which sum shall be allowed him at the treasury in his accounts.

Fees of district attorney, etc., how paid.

§ 5437, s. 856. The fees of district attorneys, clerks, marshals, and commissioners, in cases where the United States are liable to pay the same, shall be paid on settling their accounts at the treasury.

Fees, how recovered.

§ 5438, s. 857. The fees and compensations of the officers and persons hereinbefore mentioned, except those which are directed to be paid out of the treasury, shall be recovered in like manner as the fees of the officers of the States respectively, for like services are recovered.

CHAPTER II.

FEES.

AN ACT TO REGULATE FEES AND COMPENSATION FOR OFFICIAL AND OTHER SERVICES IN THE TERRITORY OF UTAH.

[Approved February 20, 1874.]

SECTION.

- 5439 Fees and compensation of officers.
- 5440 Notaries public.
- 5441 Clerks of district courts.
- 5442 County recorders.
- 5443 Marshals and sheriffs.
- 5444 Constables.
- 5445 Jurors.
- 5446 Justices of the peace.

SECTION.

- 5447 Witnesses.
- 5448 District attorneys.
- 5449 Surveyors.
- 5450 Sealer of weights and measures.
- 5451 Fees for other services.
- 5452 Interpreters.
- 5453 Greater fees forbidden.
- 5454 "Folio" defined.

Fees and compensation of officers.

§ 5439. (2376) Be it enacted, etc.: That the fees and compensation of the several officers and persons herein named, shall be as follows:

Notaries public.

§ 5440. (2377) For protesting the non-payment of a promissory note or non-payment or non-acceptance of a bill of exchange, draft or check 1 00
For drawing and serving each notice of non-payment of a promissory note, or the non-payment or non-acceptance of a bill of exchange, order, draft or check 35

\$ c.

	8 c.
For recording every protest	50
For drawing an affidavit, deposition or other paper, for which provision is not herein made, for first folio	50
For each subsequent folio	15
For taking an acknowledgment or proof of a deed or other instrument, to include the seal and writing of the certificate, for the first signature	50
For each additional signature	25
For administering an oath or affirmation	25
For every certificate, to include writing the same and the seal	50

OF CLERKS OF THE DISTRICT COURT.

§ 5441. (2378) For entering each suit on the clerk's register of actions.....	Clerks of 20 district courts.
For every case on the calendar and making a copy thereof for the bar, for each term of the court	30
For entering every motion, rule, order or default	20
For issuing every summons	50
For issuing every writ of attachment.....	1 00
For issuing every subpoena for witnesses.....	25
<i>Provided</i> , If more than three names are included in any one subpoena, for each additional name	10
For filing each paper.....	10
For calling and swearing each jury	30
For receiving and entering each verdict of a jury	25
For entering every final judgment, for the first folio.....	40
For each subsequent folio.....	15
For filing judgment roll	10
For entering satisfaction of judgment.....	25
For entering judgment on judgment docket.....	25
For administering each oath or affirmation, other than to witnesses in court.....	25
To each witness in court	10
For certifying every oath or affirmation, including seal.. ..	25
For copy of any proceeding, record or paper, for the first folio.....	30
For each subsequent folio.....	15
For every certificate under seal	50
For issuing every commission to take testimony.....	75
For taking down testimony during trial, for each folio (to be paid by the party requiring the same)	20
For issuing every execution	50
For issuing every decree or order of sale of mortgaged property	1 00
For issuing every writ of injunction, mandamus, certiorari or prohibition.....	75
For taking each bond required by law and the justification thereto...	75
For acknowledgment of deed or other instrument, for first signature	50
For each additional signature.....	25
For entering return of attachment, execution or other process.....	50
For polling each jury	25
For entering appearance.....	20
When the court is sitting as a court of criminal jurisdiction on Territorial business, for attendance on said court, per day.....	3 00

He shall receive no other fees or compensation for any services whatever, in a criminal action or proceeding, except for copies of papers, for each folio	15
Fees of district clerks in criminal cases, when the same cannot be collected from the defendant, shall be paid out of the Territorial treasury on voucher properly certified to by the court and approved by the auditor of public accounts.	
In all civil actions the clerk shall require the party commencing the suit to pay in advance, or secure by bond with security, the payment of the probable amount of the costs of said suit; <i>Provided</i> , however, that the said costs shall, at the conclusion of the trial, be paid by the party against whom said costs are adjudged by the court.	
In all cases the clerk shall keep a fee book and keep an itemized account of the fees of plaintiff and defendant, in separate columns, and when an execution is issued, a copy of said account shall accompany said execution.	

OF COUNTY RECORDERS.

County recorders.

§ 5442. (2382) For recording any instrument, paper or notice, for the first folio, to include the necessary filing, indexing, and an abstract of the title of the land, or mining claims conveyed in transfers, said abstract to be written in a book kept for that purpose	50
For each additional folio	20
For copies of any record or paper, per folio, including seal and certificate.....	25
For every entry of discharge of mortgage on margin of record.....	25
For recording every town plot, for each lot.....	15
For taking and writing acknowledgment, including seal, for the first signature	50
For each additional signature.....	25
For filing and entering minutes of certificate of sheriff's sale	50
For filing and entering minutes of certificate of tax sale.....	50
For filing and keeping each paper not required to be recorded, and endorsing the same	25
All persons interested shall have access during business hours to all records in the custody of county recorders, free of charge.	

OF MARSHALS AND SHERIFFS.

Marshals and sheriffs.

§ 5443. (2383) For serving summons in civil suit, or any other process by which an action or proceeding is commenced, on each defendant.....	1 00
For traveling in making service, per mile, in going only, to be computed in all cases from the place of holding court; <i>Provided</i> , That if two or more papers require to be served, in the same suit, at the same time, one mileage only shall be charged.....	20
For taking bond or undertaking in any case in which he is authorized to take the same, including justification.....	75
For serving every notice, rule or order.....	50
For copy of any writ, process or other paper, when demanded or required by law, per folio.....	25

For serving a subpoena, for each witness summoned.....	25
For traveling, per mile, in serving said subpoena, in going only.....	20
For summoning each juror.....	25
And mileage, one way only.....	20
For serving an attachment on property, or levying an execution, or executing an order of arrest, or an order for the delivery of personal property, and with traveling fees as on a summons....	2 00
No traveling fees shall be allowed on such attachment, order of arrest, or order for the delivery of personal property, when the same accompanies the summons in the suit, and may be executed at the time of service of summons, unless for the distance actually traveled beyond that required to serve the summons.	
For serving an attachment upon any ship, boat or vessel, in proceedings to enforce any lien thereon created by law.....	5 00
For making and posting notices, and advertising property for sale on execution, or under any judgment or order of sale, not to include the cost of publication in a newspaper.....	1 00
For commissions for receiving and paying over money on execution or other process, when property has been sold, on all sums of two hundred dollars or less.....	3 %
On all sums over two hundred dollars, and less than five hundred dollars.....	2 %
On all sums over five hundred dollars, and under one thousand dollars.....	1 %
And all sums over one thousand dollars.....	$\frac{1}{2}$ of 1 %
For commissions for receiving and paying over money on execution or other process, without levy, or when the lands or goods levied on shall not be sold, one-half of the fees above; the fees herein allowed for the levy of an execution, for advertising, and for making and collecting the money on process, and all fees not included in the judgment, shall be collected from the defendant by virtue of such process, in the same manner as the same therein are directed to be made.	
<i>Provided</i> , commission shall not be charged on more than one of the amounts above specified at one and the same time.	
For drawing and executing every marshal's or sheriff's deed, to be paid for by the grantee, who shall, in addition, pay for the acknowledgment thereof.....	2 00
For serving a writ of possession, or restitution, putting any person entitled into possession of premises, and removing occupant....	5 00
Mileage as provided for in the service of summons.	
For travel in the service of any process not hereinbefore mentioned, for each mile necessarily traveled, on going only.....	20
For attending, when required, on any district court, in person or by deputy, to be paid out of the Territorial treasury, and when on any county or probate court, to be paid out of the county treasury, for each day.....	3 00
For bringing up a prisoner on habeas corpus to testify, or for examination as to the cause of his arrest and detention, or to give bail, to include the return of the prisoner, if remanded.....	3 00
Mileage, per mile, going only.....	20
For holding a trial on the rights of property, when claimed by a third party, to include all services in the matter, except mileage.....	10 00

	\$	c.
For attending on the supreme court, either in person or by deputy, to be paid out of the Territorial treasury, as other claims, for each day.....	3	00

OF CONSTABLES.

Constables.	§ 5444. (2384)	Constables shall be allowed the same fees as by this act are allowed to sheriffs for similar services, except as herein otherwise provided.	
		For collecting all sums of money on process.	5 %

OF JURORS.

Jurors.	§ 5445. (2385)	For each day's attendance on any court of record of this Territory.....	2 00
		Mileage from residence to the place of holding court, one way only..	20
		In a justice's court or coroner's inquest.....	1 50
		Jurors shall be paid out of the county treasury of the county wherein they reside, except when serving in civil cases, and it shall be the duty of the clerk of the district court, at the close of each term of said court, to make out and give to each juror a certificate certifying the number of days attendance of, the number of miles traveled, and the amount of compensation due to said juror in criminal cases, which certificate, upon being presented to the county court of the county from which said juror was summoned, shall entitle him to be allowed and paid by said county. (1)	

OF JUSTICES OF THE PEACE.

WHEN ACTING AS CORONER.

Justices of the peace.	§ 5446. (2386)	For viewing each body, taking and returning inquest to probate court.....	5 00
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FEES IN CRIMINAL CASES.

For warrant of arrest or search warrant.....	50
For commitment to jail.....	50
For affidavit.....	25
For taking recognizance..	50
Entering judgment for fine or other punishment	50
Order of discharge to jailor.....	25

IN CIVIL CASES.

For filing each paper	10
For issuing any writ or process by which a suit is commenced.....	50
For entering cause upon the docket	25
For issuing subpoena, including all witnesses required	25
For administering oath or affirmation other than to witnesses....	25
For swearing each witness	10
For issuing writ of attachment, or arrest, or for the delivery of property.....	50
For entering final judgment	50
For taking and approving any bond or undertaking, directed by law	

(1) See post § 5457.

to be taken or approved by him	8 c.
For swearing a jury.....	25
For taking depositions, per folio.....	25
For entering satisfaction of judgment.....	25
For copy of any judgment, order, docket, proceeding or paper in his office, for each folio.....	15
For issuing commission to take testimony	50
For making up and transmitting transcript on appeal, which shall be the only charge	1 50
For issuing an execution	25
For taking bail after examination in criminal cases.....	50
For entering cause without process.	50
For entering judgment by confession.....	50
When sitting on civil or criminal cases, per day (1).....	3 00

OF WITNESSES.

§ 5447. (2387) For each day's attendance before a justice of the peace	Witnesses.	1 00
Before any other courts of this Territory.....		1 50
Mileage, one way only, from his place of residence to the place of holding court, per mile.....		20
<i>Provided</i> , Witness' fees shall, in every instance, not be taxed unless the witness appear before the clerk within two days after the trial and claim his fees.		

And further provided, That no witness shall be compelled to attend any court in civil cases unless he shall receive in advance, from the party subpoenaing him, his mileage and his fee for one day's attendance, and shall not be required to remain in court longer than one day, unless he is paid in advance for each day's attendance. (2)

OF DISTRICT ATTORNEYS.

§ 5448. (2388) District attorneys shall receive an annual compensation of, in the first district, including office rent, stationery, fuel and lights.....	District attorneys.	750 00
In the second district, including office rent, stationery, fuel and lights		750 00
In the third district, including office rent, stationery, fuel and lights.....		1500 00

OF SURVEYORS.

§ 5449. (2389) For surveying twenty acres.....	2 50	Surveyors.
For surveying thirty acres.....	2 65	
For surveying forty acres.....	3 75	
For surveying sixty acres.....	4 40	
For surveying eighty acres	5 00	
For surveying one hundred acres.....	5 65	
For surveying one hundred and twenty acres	6 00	
For surveying one hundred and sixty acres	6 25	
For surveying three hundred and twenty acres.	8 50	
For surveying six hundred and forty acres... ..	10 65	

(1) As amended Feb. 15, 1876.

(2) See post § 5457.

And for traveling to and from, ten cents per mile; *Provided*, That if more than one piece is surveyed at the same time, the traveling fees for mileage shall be apportioned according to equity; *Provided*, That if the route shall be rough, in such case, shall be allowed fees in proportion, to make it equal to a good route.

OF SEALERS OF WEIGHTS AND MEASURES.

Sealer of weights and measures.	§ 5450. (2380)	The fees for sealing weights and measures shall be as follows:	
		For each examination, testing, sealing and certifying as required from the owner of the same, to-wit:	
		For any steelyards, beam, ground, floor, platform, counter or other scales, by which may be weighed not exceeding one hundred pounds	75
		For any such instrument by which may be weighed over one hundred pounds and less than six hundred pounds.....	1 00
		Over six hundred pounds.....	1 50
		For any nests or sets of measures.....	75
		For any yard stick, dry or liquor measure	25
		And the weights attached to any scales shall, as to the compensation of the sealer of weights and measures, be considered as part of the scales: <i>Provided</i> , That where any such weights, measures or instruments, upon subsequent examination, be found correct and shall not require to be stamped a second time, the afore-said sealer of weights and measures shall not receive more than one-half the compensation provided for.	
		The sealer of weights and measures shall examine and test any of the before mentioned instruments for weighing or measuring, on application by any person who shall tender him the fee which, by the preceding section, he is authorized to receive, and he shall, in every case where he may employ labor or material in making accurate weights or measures, be entitled to extra compensation therefor, and to retain the article upon which such labor or material has been employed, until such compensation be paid.	
Fees for other services.	§ 5451. (2391)	Fees for any necessary services not mentioned in this act, shall correspond with and not exceed the fees herein allowed.	
Interpreters.	§ 5452. (2392)	Interpreters and translators shall be allowed per day, and the same mileage as witnesses	5 00
Greater fees forbidden.	§ 5453. (2393)	If any officer shall take greater fees than are herein allowed, he shall be liable to indictment and on conviction shall be removed from office and shall be fined in any sum not exceeding one thousand dollars, or be imprisoned not exceeding six months, or both fine and imprisonment at the discretion of the court.	
"Folio" defined.	§ 5454. (2394)	By "folio" as used in this act is intended one hundred words.	

CHAPTER III.

FEES FOR THE SECRETARY OF UTAH TERRITORY.

SECTION.

5455 Copy of law, etc., 20 cents per folio.
 Certificate, one dollar.
 Filing incorporation papers, five dollars.
 Issuing certificate thereon, three dollars.
 Commission, one dollar.

SECTION.

5455 Continued.
 Same, five dollars.
 Filing statement of Insurance Co., five dollars.
 Issuing certificate of authority to agents, five dollars.
 5456 Repeal

§ 5455. s 1. Be it enacted, etc.: From and after the passage of this act, the secretary of Utah Territory, for services performed in his office, may charge and collect the following fees:

1. For a copy of any law, resolution, record or other document filed of record in his office, per folio
2. For affixing certificate of the secretary and the seal of the Territory; or for the certificate of qualification of any officer ..
3. For filing papers of incorporation
4. For issuing certificate of incorporation.....
5. For each commission issued by the Governor and attested by the secretary to a Territorial, county, precinct or municipal officer, except a notary public.....
6. For each commission issued by the Governor and attested by the secretary to a notary public....
7. For each commission issued to a commissioner of deeds or other documents or warrant not hereinbefore specified, signed by the Governor and attested by the secretary, pardons excepted,
8. For filing statement of insurance company or power of attorney of a corporation to agent, or for filing any other paper or document not hereinbefore specified, except official oaths or bonds,
9. For issuing certificate of authority to the agent of an insurance company.....*

§ 5456. s 2. All other acts and parts of acts in relation to the fees of the secretary of the Territory, are hereby repealed.

[Approved, March 8, 1888.]

§ c.

March 8, 1888.

Copy of law, etc., 20 cts. per folio.
 20
 Certificate one dollar.
 1 00
 Filing incorporation papers, five dollars.
 5 00
 Issuing certificate three dollars.
 3 00
 Commission, one dollar.
 Same, three dollars.
 Same, five dollars.
 1 00
 Filing statement of insurance company, five dollars.
 5 00
 Issuing certificate of authority to agent, five dollars.
 5 00
 Repeal.

CHAPTER IV.

AN ACT PROVIDING FOR THE PAYMENT OF JURORS, WITNESSES AND PHONO-
GRAPHIC REPORTERS, AND CREATING AND DEFINING THE DUTIES OF
COURT COMMISSIONERS.

SECTION.	SECTION.
5457 Per diem of jurors and witnesses	5467 Court commissioners appointed;
5458 Clerk to issue juror and wit- ness certificates.	in case of vacancy who to act.
5459 Plaintiffs in civil cases to deposit \$3 to jury fund.	5468 Must qualify, how.
5460 Clerk to pay jury fund to treas- urer quarterly.	5469 Duties of commissioners.
5461 Clerk to keep an attendance roll of jurors and witnesses.	5470 Authorized to draw upon the auditor for funds to pay cer- tificates.
5462 Foreman of grand jury to fur- nish clerk information relative to service of jurors and wit- nesses upon which the clerk is to issue certificates.	5471 Shall keep accounts and disburse how.
5463 Jurors and witnesses to report daily to clerk.	5472 Must report to next legislative assembly; compensation of.
5464 No witness for defendant shall be subpoenaed by the Territory except on order of the court; affidavit for order must show what.	5473 Treasurer required to set apart purposes of this act.
5465 Phonographic reporter's fees.	5474 Auditor to issue warrant on order of the commissioner.
5466 Clerk to give phonographic re- porter a certificate.	5475 False swearing, how punished.
	5476 Clerks certifying untruthfully, guilty of misdemeanor.
	5477 Court commissioners guilty of misdemeanor for certain acts.
	5478 Repealing clause.
	5479 Certain persons prohibited from purchasing certificates.
	5480 Act takes effect, when.

Per diem of
jurors and
witnesses.

§ 5457. s 1. Be it enacted, etc.: That from the first day of January, A. D. 1888, and until the first day of April, A. D., 1890, witnesses for the Territory in criminal cases and jurors in the district courts, shall be paid the sum of two dollars per day for each day's attendance at court, and twelve cents per mile one way for the distance necessarily traveled from his place of residence to the place of holding court; *Provided*, That in no case shall per diem be allowed to any juror for any day when the major part thereof was devoted to the trial of cases under the laws of the United States.

Clerk to issue
jurors' and
witness'
certificates.

§ 5458. s 2. The clerk of the district court shall whenever a juror or witness for the Territory is discharged, issue to him a certificate, under the seal of the court, stating the name of such juror or witness, when and where he was summoned or subpoenaed, the date of his appearance at court, and the date of his discharge; the place of his residence, the number of miles necessarily traveled from his place of residence to the place of holding court, and the number of days

he was in actual attendance, and, if a juror, the number of days upon which the major part of the time was devoted to Territorial criminal and civil cases.

§ 5459. s 3. The plaintiff in each civil action, except equity cases where a jury is not required, and the appellant in each civil case appealed to the district court, shall respectively, before his complaint or appeal papers are filed, deposit with the clerk of said court the sum of three dollars, which shall be known and designated as the jury fund: *Provided*, That the term "civil action" in this section shall apply to and include all actions where a municipal corporation is a party beneficially interested: *Provided further*, That in case judgment is rendered in favor of such plaintiff or appellant, said amount may be taxed as costs and collected as other costs in the action.

Plaintiffs in civil cases to deposit \$3.00 to jury fund.

§ 5460. s 4. The clerk shall on or before the first Monday in June, A. D., 1888, and quarterly thereafter, pay into the Territorial treasury all sums of money deposited with him under the provisions of this act, and shall at the same time furnish the auditor of public accounts a statement in writing showing the number of complaints filed and the number of appeals taken to the district court in civil cases since making his last statement to said auditor, together with the title of each case.

Clerk to pay jury fund to treasurer quarterly.

§ 5461. s 5. It shall be the duty of the clerks of the several district courts to keep an attendance roll in which shall be noted the name of each witness subpoenaed for the prosecution in Territorial criminal cases; the name of each witness subpoenaed for the defendant at the expense of the Territory under order of the court; the name of each juror; when said witness or juror was subpoenaed or summoned; the date of appearance; the date of discharge; each day's attendance with the date thereof; his place of residence, (and the number of miles necessarily traveled by said witness or juror, from the place of his residence) to the place of holding court, and if a juror, the number of days upon which the major portion of the time was devoted to the trial of Territorial criminal and civil cases or investigations of Territorial criminal cases before a grand jury, as the case may be.

Clerk to keep an attendance roll of jurors and witnesses. Order to be made upon affidavit showing.

§ 5462. s 6. Whenever a grand juror or witness for the Territory before the grand jury is finally discharged, the foreman of said grand jury shall furnish the clerk of said

Foreman of grand jury to furnish clerk information relative to service of grand jurors and witnesses.

Clerk to issue certificate and file the facts.

Jurors and witnesses to report daily to clerk.

No witness for defendant shall be subpoenaed by the Territory except by the order of the court.

court a statement, under oath, containing the information not a matter of record required in the preceding section relative to said juror or witness, whereupon the clerk shall issue a certificate to said witness or juror as in this act provided, and shall enter the facts not already a matter of record upon such attendance roll, and carefully file and preserve the statement of said foreman for reference as hereinafter provided: *Provided*, That in no case shall any grand juror or witness before the grand jury be required to disclose any fact to any clerk or court commissioners except matters relating to his attendance.

§ 5463. s 7. Every witness subpoenaed for the Territory and every witness subpoenaed for a defendant under order of the court at the expense of the Territory, and every juror, whether grand or petit, shall report in person daily to the clerk his attendance at court from the time of his appearance till the date of his discharge, and no per diem shall be allowed for any day upon which attendance is not so reported, except in cases of sickness, while absent from home, as such juror or witness, which fact must be stated under oath to the court by the juror or witness, or some person on his behalf cognizant of the facts, whereupon the court may order the allowance per diem for such number of days as may be just and equitable: said statement so made, under oath as aforesaid, must be filed with the clerk and preserved for reference as hereinafter provided,

§ 5464. s 8. No witness for a defendant in a criminal case shall be subpoenaed, paid mileage or per diem by the Territory, except upon an order of the court when said defendant is awaiting trial for a felony, or indictable misdemeanor. Said order can only be made upon affidavit made by the defendant in person showing:

1. That said defendant is impecunious and unable to pay the per diem and mileage of said witness.
2. That the evidence of said witness is material for defendant's defence as he is advised by his counsel, and
3. That said defendant cannot safely proceed to trial without said witness.

If said facts are not successfully controverted by the district attorney or by the affidavit of some person cognizant of the facts, the courts may issue an order as aforesaid, directing that said witness if within the Territory be subpoenaed and

paid per diem and mileage, by the Territory, the same as witnesses for the prosecution.

§ 5465. s 9. Hereafter and until the first day of April, A. D., 1890, phonographic reporters in Territorial criminal cases shall receive ten dollars per diem for taking testimony and other proceedings of the court in said cases, and fifteen cents per one hundred words for transcribing the same and shall be paid upon presentation of a certificate of the clerk of said court as hereinafter provided. Phonographic reporter's fees

§ 5466. s 10. At the close of each term of the district court, the clerk of said court shall issue to the phonographic reporter thereof a certificate to be approved by the court, showing the actual number of days said reporter was engaged in taking testimony and other proceedings of the court, in Territorial criminal cases, and also the number of folios of such proceedings transcribed by said reporter together with the amount due for the services so rendered. Clerk to give phonographic reporters a certificate.

§ 5467. s 11. The following named persons are hereby appointed court commissioners whose term of office shall expire on the fifteenth day of April, A. D. 1890, to-wit: Joseph Stanford, who shall act as commissioner at Ogden for the northern division of the first judicial district; John W. Turner, who shall act at Provo for the southern division of the first judicial district; Benjamin Bennett, for the second judicial district, and Geo. D. Pyper, for the third judicial district. In case of the failure or omission of said persons from any cause to accept said office, or in case of a vacancy by death, resignation or from any other cause, in either of said offices, the clerk of the county in which the district court is held, shall be the commissioner of said court and qualify as such as in this act provided for the qualifications of commissioner. Court commissioners, who are. In case of vacancy, who to act.

§ 5468. s 12. Each of said court commissioners within thirty days after the passage of this act, or the county clerk immediately after receiving knowledge that the duties of said office have devolved upon him, as in this act provided, shall qualify by subscribing to the oath of office and filing bonds with at least two sufficient sureties, with the Territorial auditor of public accounts, which bonds must be approved by him, in the penal sum of ten thousand dollars. Must qualify, how.

§ 5469. s 13. It shall be the duty of said commissioners to examine all court certificates under the provisions of Duties of commissioners.

this act presented to them and compare them with the records of the court. They shall have access to all records, papers and statements except indictments or other proceedings before the grand jury touching upon service rendered by jurors, witnesses and phonographic reporter, and may administer oaths or affirmations to the holder of any such certificate or the person to whom it was issued and examine him regarding the service performed, miles traveled, etc. If the commissioner is satisfied that the service has been performed and the certificates are correct, he shall allow the amount claimed, and if incorrect shall increase or decrease the sum to the correct amount.

Authorized to draw upon the auditor for sufficient to pay certificates.

§ 5470. s 14. Said commissioners are authorized to draw upon the auditor of public accounts for sufficient amount to pay said jurors, witnesses and phonographic reporters upon presentation of said certificates when audited and corrected as herein provided: *Provided*, That neither of said commissioners shall at any time have on hand more than five thousand dollars for the purpose herein mentioned.

Shall keep accounts and disburse, how.

§ 5471. s 15. They shall keep an accurate account of all moneys drawn by them, to whom, and when paid, and the cause of disbursement, and they shall disburse no money except upon the presentation of said court certificates, and when payment is made thereupon said certificate shall be taken up, canceled, registered and filed annually with the auditor of public accounts.

Must report to next legislative Assembly.

§ 5472. s 16. During the first ten days of the session of the next Legislative Assembly, said commissioners shall transmit to said assembly reports of their proceedings under this act. For their services under this act each of said commissioners shall receive the sum of three hundred dollars annually, to be paid by the Territorial treasurer upon the warrant of the auditor of public accounts, out of the amount appropriated and set apart in the next section.

Compensation, amount of and how paid.

Treasurer required to set apart a fund for the purposes of this act.

§ 5473. s 17. The Territorial treasurer for the purpose of carrying out the provisions of this act is hereby required to set apart and reserve in a separate fund to be known as the fund for the payment of jurors, witnesses and phonographic reporters, all moneys appropriated for said purpose, to be paid out only upon the auditor's warrant for the payment of said phonographic reporters', jurors' and witnesses' certificates and the salaries of said commissioners.

§ 5474. s 18. It shall be the duty of the auditor of public accounts to issue his warrant upon said Territorial treasurer, for any amount not exceeding five thousand dollars at any one time, to either of said commissioners, upon an order signed by him.

Auditor to is-
sue warrant
on order of
commissioners

§ 5475. s 19. Every witness, juror, phonographic reporter or other person to whom an oath has been administered under the provisions of this act, who shall state as a fact any matter which he knows to be untrue, shall be deemed guilty of perjury and shall be punished by imprisonment in the penitentiary not less than one nor more than ten years.

False swearing
how punish-
able.

§ 5476. s 20. Every clerk of the district court who shall certify as a fact any matter which he knows to be untrue, whereby any witness, juror or phonographic reporter shall be allowed a greater sum than he would otherwise be entitled to under the provisions of this act, shall be deemed guilty of a misdemeanor.

Clerks certi-
fying to mat-
ters as facts,
which are un-
true guilty of
misdemeanor.

§ 5477. s 21. Every court commissioner who shall audit any court certificate provided for in this act, and willfully allows a greater or less amount thereon than should be allowed under this act, or who shall require any grand juror or witness before the grand jury to state any fact other than such as relates to the attendance of such juror or witness, shall be deemed guilty of a misdemeanor.

Court commis-
sioners guilty
of a misde-
meanor for
certain acts.

§ 5478. s 22. So much of Chapter II, Title 4 of "An act entitled an act revising the Code of Civil Procedure" of Utah Territory, approved March 13, 1884, as provide for the payment of phonographic reporters in criminal cases, is hereby repealed,

Repealing
clause.

§ 5479. s 23. No person connected officially with either of the district courts of this Territory, nor any public officers, shall be interested either directly or indirectly by purchase or otherwise in any certificate issued for the services of jurors or witnesses under this act, and any person violating the provisions of this section is guilty of a misdemeanor.

Certain per-
sons prohib-
ited from
purchasing
certificates.

§ 5480. s 24. This act shall expire by limitation on the first day of April A. D. 1890, and shall be in force from and after the date of its approval.

Act when it
takes effect

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